103

THE IMPACT OF DISCOUNT SUPERSTORES ON SMALL BUSINESS AND LOCAL COMMUNITIES

HEARING

BEFORE THE

COMMITTEE ON SMALL BUSINESS HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

WASHINGTON, DC, AUGUST 10, 1994

Printed for the use of the Committee on Small Business

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THE IMPACT OF DISCOUNT SUPERSTORES ON SMALL BUSINESS AND LOCAL COMMUNITIES

WEDNESDAY, AUGUST 10, 1994.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The committee met, pursuant to notice, at 9:10 a.m., in Room 2359–A, Rayburn House Office Building, Hon. John J. LaFalce (chairman of the committee) presiding.

Chairman LAFALCE. The Small Business Committee will come to order. During the past decade, American retailing has changed significantly as a result of the rapid growth of discount superstores. The superstore phenomenon includes a variety of retail formats, including well-known mass merchandise retailers like Wal-Mart, K mart, and Target, and regional general retail chains such as Ames, Jamesway, Bradley, Consolidated, Caldor and others. More recent forms of superstore chains include discount warehouse clubs, such as Sam's Club, Pace, B.J.'s Warehouse Club, and Price COSTCO, and a wide variety of so-called "category killer" chains like Toys R Us, Circuit City, Home Depot, Sports Authority and Best Buy, that specialize in specific categories of merchandise.

All these retail operations share a common strategy of competing aggressively to capture an increasing share of local retail markets, emphasizing broad product selection, sophisticated distribution and inventory systems, extensive advertising, and, some say, cut-throat pricing. Competition by retail stores affects all segments of the retail industry, from department stores to supermarkets. Wal-Mart has revolutionized the way rural and small town America shops, bringing wider product selection and lower prices. Warehouse clubs have forced supermarkets to change the way they do business, and specialty chains have reduced the variety and cost of goods sold in traditional department stores.

In general, discount superstores have been highly successful in delivering the thing consumers want most, quality products at low prices. They also have been responsible for major innovations in retailing, particularly in the use of technology for more efficient management of product supply and distribution. Their focus on efficiency has squeezed costs out of our system for distributing consumer goods by forcing manufacturers to streamline operations, competing retailers to reduce costs, and retail workers to increase productivity.

Nevertheless, the expansion of superstore chains has created significant controversy and opposition. In the past year, an increasing number of press articles have questioned the practices of

superstores and documented the efforts of local civic and business groups in Vermont, Massachusetts, New York, and elsewhere to halt new superstore development.

Press reports describe communities in which numerous businesses fail following the opening of a superstore, leaving small town main streets lined with empty buildings and towns depleted of their commercial life and civic leadership. There are growing complaints that superstores engage in a variety of questionable practices, including predatory pricing, unfair labor practices, unnecessary duplication of existing retail space, and intentional market saturation.

A key issue in the debate over superstore development is whether the significant growth in retail sales by superstores has come at the expense of existing retail operations, particularly smaller local merchants. A December 1992 Business Week article quotes retail analysts as predicting that retailers who now account for more than a half of all retail merchandise sales will disappear by the year 2000 through bankruptcies, mergers, or reorganizations. Their survivors in most instances are predicted to be retail superstores. A number of recent studies of individual communities in which superstores have located suggest that sales generated by superstores have come largely at the expense of existing retailers and that, even where communities benefit from overall growth in retail sales, surrounding areas suffer substantial sales losses.

The consequences of new superstore development on existing retail businesses is more than an academic interest to me. Last year Wal-Mart indicated its intention to ring the Buffalo metropolitan area with new stores. What the Buffalo news has described as, "the retailing noose Wal-Mart is drawing around Buffalo," has grown to 11 open or publicly announced Wal-Mart stores in towns from Niagara Falls and Brockport in the north, to Jamestown in the southwest.

Some stores, I understand, may also be planned for Orleans County and the eastern Niagara County area. Wal-Mart is also planning potentially equal numbers of Sam's Club warehouse stores in the area. In May, Minneapolis-based Target also announced plans to expand into Buffalo with a number of new superstores. This development is coming into a market in which K mart, Ames, and other large discount merchandise chains have been operating stores for many years.

The purpose of today's hearing is to analyze the growth and operation of retail superstores, and to highlight key questions of concern to small business owners and local communities. Have discount superstores contributed to the failure of significant numbers of competing small retail businesses? Do they undermine the economic vitality of downtown business areas and divert retail business to locations outside of towns? Do superstores engage in unfair pricing and advertising practices? Do superstore labor practices create competitive disadvantages for local retail merchants? Do superstores generate increased local employment or merely replace existing business ownership and employment opportunities? Do superstore policies that create direct links with manufacturers unfairly restrict the business of small product distributors, agents, and dealers?

Today's hearing is intended to provide an initial inquiry into these and other questions relating to the phenomenal growth of retail superstores and the consequences of this growth for small businesses and local communities. Our committee has sought the testimony of witnesses and organizations that will highlight major issues in the superstore debate and raise questions for possible inquiry in future committee hearings.

Our witness panel represents, again, a variety, a diversity of perspectives on the superstore issue, including representatives of the National Trust for Historic Preservation, the International Mass Retail Association, the AFL–CIO, the National Association of Retail Druggists, the Manufacturers Agents National Association, and an independent expert in community economic development issues.

Before I introduce the panel though, I wonder if any members of the committee have any statements they wish to make.

Mrs. Meyers.

[Chairman LaFalce's statement may be found in the appendix.]

Mrs. MEYERS. Thank you, Mr. Chairman. Because I do want to hear from our witnesses today, I am going to try to do this in a couple of minutes.

The problems faced by small business retailers when competing with mass retailers and discount stores are well chronicled and have a long history. Since at least the 1930's, small independent retailers have found it increasingly difficult to compete with much larger mass merchandisers.

In an effort to save small retail firms from extinction, many States passed below cost pricing statutes and/or unfair competition acts. These laws differed from Federal antitrust laws in that they were designed in large part to protect competitors and not necessarily the competitive process.

Additionally, around this same time, the Federal antitrust laws were amended by the addition of a far-ranging price discrimination law, the Robinson-Patman Act. These developments combined to give some level of protection to small retail firms in the area of price. Since these developments back in the 1930's, American retailing has changed dramatically, particularly during the last decade. This has largely been a result of the emergence of discount superstores.

The superstore phenomenon has taken many forms and appears to have had a pervasive influence over retailing, both generally and with respect to specific categories of products.

The discount marketers have been very successful at delivering quality products to consumers at low prices, and this of course is advantageous to all of us. However, there is some concern that the discount superstores are going beyond aggressive competition and have at times crossed the line into unfair competition, and this is what I think we would like to hear about today.

As I see it, competition and a competitive marketplace work best when there is a minimum of interference by outside concerns. When small businesses are unable to compete with large firms in price, they can usually make up for it on the basis of nonprice factors, convenience or location, service, delivery, friendliness, all of those things that have made the small business person able to compete over the years.

So I thank you again, Mr. Chairman, for holding this hearing and I look forward to the testimony of our witnesses.

[Mrs. Meyers' statement may be found in the appendix.]

Chairman LAFALCE. Do any other members of the panel have any prestatements?

No.

Mr. Zeliff.

Mr. ZELIFF. Thank you, Mr. Chairman. I appreciate your bringing this hearing together to examine the remarkable growth of discount chain stores, especially their effects on local small businesses and communities.

I believe that the superstores represent the natural evolution of retailing. These enormous chains of outlets turn a profit because they have made use of modern technology and management techniques.

These superstores may offer 50,000 products in a single 90,000 square foot space. They use computerized inventory management, distribution, discount pricing, and innovative advertising.

These stores have also become major players in the employment business. Wal-Mart, for instance, is our Nation's second largest private employer behind General Motors with nearly a half a million employees.

The success of these superstores has also spawned critics, those who claim the stores destroy downtown business districts by overwhelming markets and undercutting prices.

To what extent this is the case is open to interpretation.

While traditional Five and Dimes usually can't compete on price and selection alone, sometimes other factors do weigh in.

In small close-knit stores, customer service and the intimate atmosphere of the Main Street corner store may be just as important to drawing customers. Also, specialty businesses such as hobby shops or fashion boutiques often thrive.

Superstores do not compete directly with these niche stores and they offer the additional benefit of attracting customers to the area.

These are significant issues worth exploring, and I look forward to the testimony of the witnesses today.

In New Hampshire, this is just this weekend, I will submit these for the record, with my opening statement, Wal-Mart picks Raymond, New Hampshire as a major distribution center, employment up 600. Well, Raymond, New Hampshire is one of the largest areas of unemployment, so this is good news to that area, and the State was involved, Department of Economic Resources. The newspaper says, Wal-Mart will give boost to Raymond.

Again, my involvement before I became a small businessman prior to 1976, I was marketing manager for the Dupont Company and represented and was responsible for the sale of the Xerox antifreeze business, and when we started out early on, we sold through traditional outlets like wholesalers. Now, we sell through—two-thirds through mass merchandisers, and while I am supportive of small business, I don't think Government can make up for the inefficiencies of the market, and I think that is the thing that will be interesting to bring out today and I look forward to the testimony.

[The news article may be found in the appendix.]

Chairman LAFALCE. Miss Velázquez.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman. Mr. Chairman, I would like to thank you for convening this important hearing on the impact of discount superstores on small business and local communities.

Discount superstores offer consumers huge selections and low prices for the goods they would normally attempt to purchase from small merchants, but at what cost? I hope to learn from the witnesses today how we can address the concerns raised by the mom and pop operations that discount superstores literally steal business and lead to underdevelopment of many areas.

I am not against development, but I want to insure that there is not a hostile environment for small merchants. I thank you again, Mr. Chairman, and look forward to the testimony of our witnesses.

Chairman LAFALCE. Thank you very much.

[Mr. Collins' statement may be found in the appendix.]

[Mr. Ramstad's statement may be found in the appendix.]

Chairman LAFALCE. We have an excellent panel this morning. I will introduce all of them.

Our first witness is going to be Mr. John Rector, the senior vice-president for Government Affairs and also the general counsel for the National Association of Retail Druggists. I understand that Mr. Rector must leave this morning to attend a health care meeting in the Senate, so we have agreed to let him testify first.

He will be followed by Mr. Morrison Cain, the vice-president for Legal and Public Affairs with the International Mass Retail Association. Following him will be Mr. Doug Loescher, program director for information with the National Main Street Center of the National Trust for Historic Preservation.

Next we will have Mr. Jeffrey Fiedler, the secretary-treasurer of the Food & Allied Services Trades Department of the AFL–CIO; then we will hear from Mr. Tom Muller, an economist and writer on economic development issues from Fairfax, Virginia, and our final witness this morning will be Mr. Lionel Diaz, the senior vice-president of the Manufacturers Agents National Association. Mr. Diaz is also testifying on behalf of the Small Business Legislative Council from whom we have heard often through Mr. John Saterjay, who is in attendance this morning.

Gentlemen, we will proceed. We will take the entirety of your testimony and put it in the record as if it were read, and so that we can have as much dialog with you as possible. I would hope that you could confine your opening statements to approximately 5 minutes or so. We will be a little bit lenient, but certainly we don't want anyone to go beyond 10. If you can keep it in 5, that would be better.

Mr. Rector, we will start with you.

TESTIMONY OF JOHN RECTOR, GENERAL COUNSEL, NATIONAL ASSOCIATION OF RETAIL DRUGGISTS

Mr. RECTOR. Thank you very much, Mr. Chairman. I am pleased to be here today to participate in the initial hearing on this very important inquiry that relates to the impact of discount superstores on small businesses and local communities. The National Association of Retail Druggists represents nearly 40,000 independent

pharmacies where 75,000 pharmacists practice their profession. We represent about 70 percent of the marketplace in prescription drugs. I should indicate that we also have affiliates in each of the 50 States, including New York, Kansas, New Hampshire, Massachusetts, California, and Virginia, and we are here today on their behalf of course as well.

I should note that our type of small business persons are in a special position with regard to the American consumer. In the last five consecutive Gallup polls, the American consumer has rated the retail druggists as the most trustworthy among the various professions in the economy.

We are in a very competitive marketplace. On the average, our members obtain a 2 percent pretax net profit. This morning, we have been asked to address the classic predatory pricing practices of some of the larger superstores in our marketplace, particularly the Wal-Mart Inc. as evidenced by the *American Drug Inc.* versus *Wal-Mart stores* litigation in Conway, Arkansas. This case and its outcome were characterized as a thunderbolt from small town America, and I would like to touch on it just briefly.

There was reference made to the State statutes that were passed contemporaneous with the Robinson Patman in the 1930's and of course at issue in the litigation in Arkansas is the application of the predatory pricing law to the conduct of the Wal-Mart Corporation. There are some 20 States that have comparable statutes around the country.

I want to interject, based on a comment I just heard, that we are not against efficiency and economies of scale and so forth, and we don't want the Government to be involved in any of those kinds of matters either; but we do want to see that all the players in the marketplace play by the rules of the game, and the rules of the game include the antitrust laws, both the Federal laws and the State laws, such as the State laws on the books in Arkansas and 20 other States.

There are exceptions, of course, to these statutes. Seasonal goods, damaged goods, perishable goods, good-faith closing sales, court ordered sales, and so forth are not at issue in the discussion at hand.

In this case, one of our members in late 1991 began to determine a rather substantial difference in price with regard to prescription drugs, with regard to OTC drugs and health and beauty aids in the market area where he practiced pharmacy and owned his business. The more he looked, the more he found, and eventually he became convinced, and we became convinced that as Wal-Mart was able to eliminate its competitors, the classic consequences of a predator occurred.

Theybegan to gather evidence in those communities. The prices skyrocketed where the competitors had been eliminated, so they began to gather extensive information. They shopped Wal-Marts throughout the central core, the State of Arkansas, and eventually it led to this lawsuit.

We have provided for your information a copy of the judge's decision in the case. I am not going to reiterate that, but the gist of it is that the judge agreed that not only did these practices occur, but that they met the burden of the statute, that there was pricing that was predatory in nature, which meant that it was priced with

the intent to drive small retailers out of business. It wasn't a meeting competition circumstance; it wasn't a loss leader circumstance; and it wasn't the other kinds of circumstances that are normally justified and recognized as valid in the marketplace.

Now, let me just mention one example as typical of the conduct that was in question.

In a community where there was substantial competition, in North Little Rock, Arkansas, a case of, I think it was Infamil or some type of baby formula sold for about $11 a case. As you got up into the country and the mountain area where the rural poor folks were, the same case where they had eliminated their competitors sold for $22 a case. As you study during the course of this investigation the particulars and the facts that were presented and the facts the judge concurred with, you will see that the record is replete with comparable examples with regard to RX drugs, OTC drugs, and health and beauty aids sold in drug stores in each of your respective districts.

With regard to whether or not Wal-Mart or superstores in general compete with our members, I think this case is enlightening. In the various stores, Wal-Mart stores, they actually posted the names of our pharmacies at the counter with regard to the price of our of RX drugs, and the price of OTC drugs.

So when you hear that Wal Mart only competes with other superstores, with K marts and the like, I would recommend that you take a second, hard, careful and close look at the reality of the circumstance. Certainly the facts as established in the case in Arkansas bear out the observation.

The court ruling is not only a victory for the independent pharmacies, but for small business generally. Of course the statute wasn't written with regard to drug stores. We just happened to be particularly victimized by their conduct and able and willing to establish the facts to the satisfaction of the judge in Arkansas.

Our Nation's antitrust laws were enacted to foster a competitive marketplace that keeps prices competitive. When huge businesses such as Wal-Mart are permitted to violate these laws and drive other competitors out of business, prices rise and consumers suffer.

I should indicate that this case is on appeal to the Arkansas Supreme Court. All the paperwork has been filed. Oral arguments were going to occur late this month, or early in September, and then Wal-Mart asked for an extension; it was granted, and the oral arguments will take place some time in the fall.

You will hear a lot about constitutional arguments: that there is an unnecessary burden on interstate commerce placed by these statutes; you will hear that there are preemptions by Federal law, and a whole host of other claims. I have included as an attachment to our statement Judge Ellis' decision in 1986 in Oklahoma where a very similar case occurred.

This is not unique conduct, and I think if you look carefully at the record in Conway, you will see that what was documented there was not in any way unique to Faulkner County where this case arose. It was documented that Wal-Mart systemically acts as they acted in Faulkner County throughout the country. In fact, the pricing practices are established in Bentonville, Arkansas. The record shows that prices are established for each of the various

stores and managers have little or no discretion to change those pricing practices. So this record provided a real look-see into the actual pricing behavior of this particular entity.

In the Oklahoma case, each and every one of their arguments were rejected. Ironically, the Federal Trade Commission intervened on behalf of Wal-Mart. I remember at the time we were quite intrigued by that, as if Wal-Mart needed help, but they did and they lost. It is a very pertinent decision. Judge Ellis rejected each of the constitutional and other arguments that will be discussed, I am sure, today or as you go on with your inquiry.

Our perception as to why predatory pricing has occurred is that we have just emerged from a decade or so of what we consider to be lackluster, at best, antitrust enforcement. At the Federal level in particular; and certainly in some of the States. I don't have time to go into all the details, but we have submitted for the record information supporting such claims, particularly in the early 1980's, at the Federal Trade Commission.

The FTC characterized predatory pricing in a very flip, cute way—they said predatory was as common and as frequent as unicorns sightings. We did have a period of time where those who had sworn to uphold the laws of the land had a different view, at least as it related to these particular laws.

On the more positive side, the recent H.R. 2243 that the House passed on suspension several weeks ago or the FTC reauthorization bill does contain provisions aimed at predatory pricing, requiring the FTC to respond in a more reasonable and responsive way to all complaints of predatory pricing, and at least as importantly, and I should stress it was a bipartisan bill, Mr. Dingell and Mr. Swift, Mr. Moorhead, and Mr. Oxley worked very hard on the bill.

It also prevents the Federal Trade Commission, as it was so often their habit in the recent past, from inappropriately intervening in the State legislative process and intervening in the State agency process on matters like predatory pricing.

This will be addressed—in the House bill that was passed and in the comparable Senate bill that Senators Hollings, Bryan and Danforth and others are pursuing.

I know we are limited in time. I will say that we are pleased to participate in this initial hearing, and it is interesting to us that most of the consumer groups, and I am sure you will be hearing from them as you proceed, strongly support the enforcement of the predatory pricing laws at the Federal level and certainly at the State level. In the long run, the consumers benefit by seeing to it that the predators don't win in the short run.

The objective of the laws was to assure that there was a sufficient number of competitors to give the consumers sufficient choice to maintain a competitive marketplace, and we share these concerns.

We look forward to helping you as you develop the different sub-issues. I will close with my comments.

Thank you.

Chairman LAFALCE. I thank you very much, Mr. Rector, and it is my hope that you will be able to stay as long as possible because I am sure that some other members of the panel will want to join

issue with you, and it might be good if we had a bit of repartee among the panelists.

Mr. RECTOR. Certainly.

[The information may be found in the appendix.]

Chairman LAFALCE. I will call upon someone now who I suspect might have a different perspective, Mr. Morrison Cain, the vice-president of Legal and Public Affairs for the International Mass Retail Association.

TESTIMONY OF MORRISON G. CAIN, VICE-PRESIDENT, LEGAL & PUBLIC AFFAIRS, INTERNATIONAL MASS RETAIL ASSOCIATION

Mr. CAIN. Good morning members of the committee. I am Morrison Cain. I am vice-president of Legal and Public Affairs for the International Mass Retail Association.

I am here today to give you the mass retailing industry's perspective on a variety of issues related to discount superstores, and the ways in which they affect small businesses and the local communities they serve. I summarize my main points in the written testimony.

Essentially, contrary to what you are going to hear a lot of today and may have read in some fairly superficial press accounts, the impact of large-scale discount stores on both small businesses and local communities is overwhelmingly favorable. Large-scale retailers bring consumers greater choice. They bring them pocketbook savings.

In addition, they promote employment and income growth and an improved economy. For most local businesses, that is going to mean an expanded market, more customers, new outlets for their locally-produced goods, and new supply sources for small businesses themselves.

My group represents the Nation's mass retail industry. It has been variously estimated last year that was somewhere between $245 to $265 billion of sales in the United States. My members are a variety of formats, some of which you have heard referenced here today, the full-line discount stores, the Wal-Marts, Targets, Caldors, Bradleys, whether they are national or in regions, warehouse clubs, Price/COSTCO, Sam's, B.J.'s, specialty discounters like Circuit City or CompUSA, Sportmart, and many more; and large home centers like Home Depot, Lowe's, Hechinger's, and many other.

We also represent a number of smaller format and smaller companies. I have dollar stores, close-out stores. I have small chains, three or four discount stores or half a dozen variety stores.

They operate in all sorts of locations. They are in every congressional district in the country. They are freestanding stores. They are in small strip malls. They are in neighborhood centers, regional centers, community malls, new stores, remodeled stores, takeovers, in some cases they are in an historic preservation project. The different formats and the different marketing philosophy of the company is going to determine what kind of stores, what size stores, what areas.

Overall, to characterize the industry, even more than retailing in general, mass retailing is very highly competitive. It is also operat-

ing on extremely thin margins. Because of the lower markup, the key to a mass retailer's continued success is large volume and continued growth, and it is a highly volatile business, as can be readily seen by comparing the list of the industry leaders today as opposed to 5 or 10 years ago, to say nothing of much longer.

We survive and continue to provide employment and economic opportunity by delivering value and satisfying customers. We give them a competitive low price. We bring them efficiencies. We are very deeply committed to technological improvements. That is one of the elements of the success that the industry has enjoyed.

To do that, to succeed on our volume basis, we have to have items in stock. We have to match our hours of operation and the types of services not to our convenience, but to our customer's preference. We have to get them into the store, let them find what they are looking for, pay a price that they want to pay, and get out of the store as fast and hassle free as possible. That is why we have extensive check-out scanning, sophisticated inventory processing systems, direct store to warehouse electronic communication. That is why we have eliminated a lot of paperwork, and are on line with vendors and warehouses in the central office.

We have just-in-time delivery and are increasingly eliminating the storage area within the store. That is, to continue to succeed, we have to remain the most efficient, low-cost operators. That is the difference frankly between success and failure for us in this business.

I don't want to suggest that we are slighting our employees, because just as much as technology, they are a key to the success of the industry. You have heard mention that mass retailing is—in fact the New York Times article that is attached, the first attachment to my testimony, calls it an engine of job creation. That is true not just for Wal-Mart, which has been mentioned, but for many other companies.

They are, like all retailers, labor intensive. They create lots of jobs. Contrary to what you also may hear, they are fairly well-paid jobs. They may, in fact, be the best employment opportunities available in many of their communities.

Any retailer is going to be affected by events beyond his or her control, change in the economy, the growth in the area's population, consumer trends, and preferences. The key is providing value to customers, and that is the organizing principle for the mass retail industry, delivering value to customers.

Does our larger size and our economic efficiencies and our aggressive pricing mean that small businesses are doomed to failure? Absolutely not. There is extensive academic and case history evidence to show that a large discount store acts as a magnet in the communities that they are in or near. They draw economic development. They keep the local residents from doing their shopping in distant locations. They keep the local tax base there. They keep the sales tax in the community.

As a matter of fact, there are numerous examples of that in the attachments to the testimony. Small businesses often are motivated, catalyzed, development is often sparked by the appearance of a large discount store.

How does a small retailer survive? They differentiate. They find a niche. They provide services that the mass retailer does not. They don't compete on price, but they sharpen their price policies so that the high volume traffic goods, the ones that the consumers understand the prices of are more competitive. They may refocus from being a general toy store to being a hobby and craft store. They may improve their marketing, expand their hours, improve their policies.

We include in the attachments probably the best study on the impact of rural communities. It was done by the University of Missouri. It looked at 20 years of data in 26 States, looking at over 1,800 rural communities, a third of them that had, in this case, a Wal-Mart, which they had identified as the most prevalent large-scale discounter in this trade area, and the counties that did not.

They looked, they adjusted for population and economic growth and they looked at 18 different economic indicators. Adjusting for that, for every one of the 18 economic indicators, the county that had the Wal-Mart came out better than the counties that did not have a Wal-Mart.

As a matter of fact, in several very important categories, real income and payrolls, the county that hosted a Wal-Mart had a higher rate of increase than the State overall, not just the other rural communities.

These researchers also found that the longer a Wal-Mart had been operating in the county over time, the stronger and more favorable the impact was on those economic indicators.

Also one further attachment, I will just reference briefly, a trade publication for the discount industry, Discount Merchandiser, undertook several years ago to survey Chambers of Commerce in 30 rural communities where Wal-Marts had been operating. It is Attachment C to the testimony, but the response from the Chambers of Commerce when they were asked on the impact was almost universal.

Those communities were growing, they were expanding their trade area, they were attracting new business. Not just that the discount store prospered, but that the overall community was prospering.

Chairman LaFalce. Mr. Cain, I am going to have to ask you to conclude very shortly.

Mr. Cain. I have just one further point, Mr. Chairman, and that is, what is true of rural communities increasingly is becoming recognized as applying to some of our urban communities.

The last attachment that I have put on the testimony talks of the efforts of New York City Economic Development Agency officials. They want to take industrial areas that are either vacant or underused and make zoning easier to attract the superstores.

Right now you have to go through as much as 5 years of processing to try to get a retail store greater than 10,000 square feet in those sites. The Economic Development folks in New York are beginning to recognize that if they want to keep growth in the city, they want to keep shoppers from leaving for Nassau, for New Jersey, for Connecticut, they need to promote this kind of development and growth in the cities as well. It helps the rural counties; it helps the cities.

In sum, what you see here is the impact of free-market competition. Consumers vote every day with their dollars. They are voting to superstores. Small business can compete if it does so correctly, and communities benefit rather than are harmed by the growth of superstores.

Thank you very much, Mr. Chairman.

Chairman LAFALCE. Thank you very much, Mr. Cain.

[Mr. Cain's statement may be found in the appendix.]

Chairman LAFALCE. Our next witness is going to be from the National Trust for Historic Preservation. I have come to have extreme high regard for The National Trust. I know its head, Richard Moe very well. He is a personal friend, and although I do not know our witness, Mr. Doug Loescher, I understand he has done some outstanding work as head of the National Main Street Center, which is a program of the National Trust for Historic Preservation.

Mr. Loescher.

TESTIMONY OF DOUG LOESCHER, NATIONAL MAIN STREET CENTER, NATIONAL TRUST FOR HISTORIC PRESERVATION

Mr. LOESCHER. Thank you. The National Trust for Historic Preservation is a national nonprofit, as many of you know, that has been chartered to lead the revitalization of small communities and large communities, and historic environments in general.

The Main Street Center, which is a program of the National Trust, is specifically created to restore viability and vitality of traditional town centers and to do that by helping build local capacity to do their own work.

Today we have worked in about 900 cities across the country, most of them small towns in rural areas, and we have helped them launch successful downtown revitalization programs that have resulted in a leveraging of $25 of private investment, mostly by those small businesses located in those districts, for every dollar the local revitalization program spends.

The kind of work that we do is direct, it is hands-on, it is firsthand. We work in the communities day by day helping them, training them, consulting with them, and gathering information to help them build their own revitalization efforts.

In the past four decades, we have seen a real shift in those types of centers, and that has happened because of a decline that is due to commercial overbuilding that we have seen across the country, and that kind of commercial overbuilding has resulted in sprawl, and that sprawl has helped displace downtown retail activity, and as downtown vacancies have increased, we have also seen property values and tax revenues in those districts plummet.

A couple ways of looking at the overbuilding are looking at retail sales and at retail space across the country.

For example, in the last 10 years, we have seen retail space increase by 40 percent across the country, while retail sales have only grown by 8 percent. If we look at the space that has been generated, in 1960 this country had approximately 4 square feet of retail space per capita. Today that figure is 18 square feet of space, and the kind of impact that has had, as we have seen it, has been the resulting sprawl, and a sprawl that has become increasingly questioned by the municipalities that are affected.

For example, a study done in 1992 by the DuPage County Illinois Department of Planning concluded that the property and retail sales revenues that would be generated by new commercial suburban development, some of which was generated by superstores, did not cover the county's cost that would be associated with extended highway and other infrastructure development, expanded service coverage, such as police, fire and ambulance, and providing financing and offering other types of development incentives. It is that type of overbuilding that has caused downtowns to decline, and that is why our center exists.

In our experience over the past 14 years, we really see small business as the key for reversing that kind of spiral of disinvestment that is happening on Main Street and as those small businesses strengthen, their sales increase, and that results in a stronger rent structure, which in turn creates the revitalization we are looking for.

The kind of sprawl that has happened over the last 30 years, as we have talked about, has damaged, as we see it, tens of thousands of small businesses that are located in those downtowns. Superstores pose an unprecedented threat above and beyond what has happened in the past, and that can be looked at in a couple of different ways.

Chairman LAFALCE. You say in your written testimony, an unprecedented threat?

Mr. LOESCHER. Yes. In terms of jobs, it has often been purported that the introduction of a superstore will bring new jobs into a community, and when that is looked at more closely, it is often found that there is a one-for-one job displacement that occurs. For every job that might be lost in a downtown area which might have high-income potential of an entrepreneur who may even be supporting a family, is replaced by a job in a superstore which may have lower potential for job and income generation.

We have also found that displacement of even moderate amounts of commercial activity can really severely damage these small businesses. For example, as little as a 5 percent decrease in business can really endanger some of those small operations whose profit margins are often fairly small themselves, and we also know that these small town businesses place less demand on infrastructure, partially because they are in compact existing business districts and they also rely on an existing pedestrian traffic, up to 35 percent of downtown workers generating their income.

We also see that superstores often induce sprawl by locating away from downtowns. Small, independently-owned downtown businesses also appear to return greater economic benefits to a community than superstores and sometimes that fact is not quite clear in the economic impact statements that are prepared by those stores.

For example, in the last year in Chestertown, Maryland where this issue emerged, a superstore was proposed and the economic impact statement portrayed that introduction as having a high-economic benefit for the community and very little negative impact to the traditional business district. Our analysis showed that 48 of the 65 downtown businesses would be severely impacted, however.

On another level, looking at it across the country, we often hear from local financial institutions who report that while they often manage most of the funds of small businesses located there, they rarely do so for the superstores, and as a whole, downtown businesses support a variety of community causes and civic causes to a much larger degree often than what the superstores can do for that same community.

Finally, we see that superstores can inhibit the entrepreneurial development in a community. That development often comes from small business retail startup, and that is far more difficult when the market has been over saturated with retailing.

So we see the damage that is potentially posed by superstore development really relating to the flooding of the community with excess retail space, and in our experience over the past 14 years, as we have worked with these different communities, we know that we are not intending to turn back the clock to a different time and a different type of retailing era and lifestyles.

What we are looking to do is to level the playing field and make sure that small businesses have all of the tools that can be available to them and that communities know the true and accurate cost of the introduction of those types of superstores.

Thank you.

Chairman LaFalce. Thank you very much, Mr. Loescher.

[The information may be found in the appendix.]

Chairman LaFalce. Our next witness is going to be Mr. Jeffrey Fiedler, the secretary-treasurer of the Food & Allied Services Trades Department of the AFL–CIO.

TESTIMONY OF JEFFREY L. FIEDLER, SECRETARY-TREASURER, FOOD & ALLIED SERVICES TRADES DEPARTMENT, AFL–CIO

Mr. Fiedler. Thank you, Mr. Chairman. The Food & Allied Service Trades, otherwise known as FAST, represents about 3.5 million members of 16 unions in virtually every constituency in this country. Our members have been involved as trade unionists, as citizens, as consumers, and residents of small towns, in opposing the creation or the construction of superstores in town after town after town.

I will offer the committee a number of observations based both on our members' experience and on some of the studies that FAST has been asked to do over the years.

Most of these companies, but specifically Wal-Mart, basically created their initial growth in rural areas. Only now are they moving into suburban and urban areas, having fully played out their growth in the rural areas. The impact has been studied. Mr. Cain has cited a study. Mr. Stone has done a well-known study in Iowa.

The important thing, and there have been a number of informal studies done, is that it is clear that the core town where a superstore goes is benefited. I don't think there is any question about that. Economically, there may well be serious detrimental effects on the Main Street area because they locate outside, but overall economically in the core area, they are benefited.

Unfortunately, the collateral damage, as is made known by Mr. Clancy lately talking about collateral damage in his book and

movie, is extreme. In a rural area, they draw from anywhere from 20 to 50 miles away, so the effect in a multitude of towns surrounding the store area is extreme.

I would second what Mr. Loescher says—by the way, before I do that, I met a man in Missouri who keeps his own list, which he calls Wal-Martyrs, of 250 small businesses in his opinion that have gone out because of the location of the Wal-Mart in his area, and I would say to you that one thing we haven't heard, and I don't think anybody has studied, is the—not just the immediate impact of a superstore, but the impact over time on the small businesses. Some will survive the first year and go down the second. Some will survive the first two and take a hit in the third.

Let me address the jobs myth and second what Mr. Loescher said. Essentially it is no better than a wash. Yes, you create jobs in the core town, and a superstore, depending on the size, will create anywhere from 300 to 500 jobs.

Now, and I must admit, I have always found it offensive how Government statistics cite the number of jobs created. It doesn't matter what administration is in office. Everybody will say we have created a million jobs this month or we have created a million the next, and when, in fact, we don't talk about the quality of those jobs, the hours, how many hours one works in those jobs, but you count one job, whether it is 10, 28, or 40 hours.

Wal-Mart, for instance, defines full-time as 28 hours. Now, you and I would generally define full-time as 40. They have just simply redefined what full-time means. Part-time to them generally means around 10, so 300 to 500 sounds like a lot of jobs, but you have got to look beyond those numbers, what does that mean.

Those numbers generally are minimum wage jobs, slightly above minimum wage, assistant department managers may be up at $7 or $8 an hour. You rarely find anybody in a superstore, even in a warehouse in New Hampshire making any more than $9 an hour.

What the superstores generally do is create wage competition with their low wages. Wal-Mart and K mart—I mean Wal-Mart is the best at it, there is no doubt about it, they have the lowest cost labor structure in the country for its category of business. That is not entirely productivity. It is low wages.

The most significant cost of labor is the hourly wage, and so we don't find the diminution of wages in an area through both job loss and pressure brought by the large companies to be in the interest of the local community. Our members are impacted.

I don't want to belabor the point that nonunion versus union impact of these things, but clearly in areas where we have stores organized, there is extreme bargaining pressure on our employers to reduce wages in the next round of bargaining. I don't want to also be ideological about it, but our purpose in life is to eliminate wage competition as a factor of doing business, and so we don't look at that particularly sanguinely.

One of the other problems that we find in Wal-Mart and K mart that has recently been pointed out in the study by the United Food and Commercial Workers is health care cost shifting. What the food and commercial workers did was take 1990 Government documents filed by Wal-Mart and K mart and study them for their health and welfare plan information. Basically they found that

about 43 percent of Wal-Mart's employees were covered and only 32 percent of K mart's. The Wal-Mart employee paid an average of 36 percent of the premium and the K mart employee 32 percent, and the national average of course is 20. I would remind you that these are low-wage workers paying high premiums.

That being bad enough, when you look at the plans carefully, you see, outrageous in our view, deductibles, anywhere from single coverage ranging from $750 to $3,000 a year, out-of-pocket medicals for family coverage running from $3,750 to $10,000 a year. I would submit to you that that is virtually no coverage except for major medical, catastrophic illness.

We estimate that they have shifted $1 billion in health care costs to other employers in 1993 alone.

Let me deal with the price myth for a second. Wal-Mart was just recently tagged in Michigan, I believe it was Michigan, about its advertising on always the low price always. We found in an odd sort of way when we were investigating Wal-Mart's overseas production activities in Bangladesh, which you might have seen on Dateline in 1992, we found 9-year-old girls putting on the bar coded label price tags in Dacca, it is a Sharaka garment factory. We said, wait a second, why are they doing that. Well, beyond the fact that it is a nickel an hour labor, that has to mean that the product is priced everywhere in the country at the same price. So we went to Mississippi, we looked and we found that was true. Went to Chicago, found it was the same price.

I submit to you that workers in Chicago make a lot more money than workers generally do in Mississippi, and therefore, effectively what you have is rural America subsidizing the prices on private label products produced by these large superstores, lower wage workers in rural areas subsidizing higher wage worker's prices.

I find that personally offensive. I understand the efficiencies that are brought to bear by having overseas workers put on price tags and the advantage of pricing nationally, but I still find they have the ability to regionally price labor, but not their product.

On unfair labor practice charges, unions have generally not—we have a couple of these companies organized, Caldor, Bradleys—we have generally not launched major efforts to organize them yet, given their size. The Teamsters recently ran an election against a distribution center of K mart in Illinois where private detectives were hired by K mart to spy on the workers in their organizing campaign, amply documented actual reports from the K mart private detective agency were sent anonymously to the union. It has been played out in the press. If you were to read the actual documents, you would find it sickening, 28-year employees of K mart being surveilled by private detectives.

We have filed an unfair labor practice recently, in the only effort I know to organize a Wal-Mart, in Massachusetts where a worker was fired allegedly for organizing, or at least the workers in the union are alleging that. I don't think the NLRB has decided. Wal-Mart has been the subject of a number of stories in the press and TV on its no fraternization policies, which are invasive.

Chairman LaFalce. Mr. Fiedler, you are going to have to summarize.

Mr. FIEDLER. I would just say to you that we have found a great contrast between employees of small businesses and employees of the superstores where fear predominates.

Let me just say one additional thing, there is no reason, Mr. Chairman, that Federal policy should allow industrial revenue bonds, redevelopment financing, or any sort of financial incentive whatsoever for the creation of a superstore. They do not need the money, and it should be ended. Town is played off against town to give incentives to companies that intend to go there anyway.

Thank you.

Chairman LAFALCE. Thank you.

[Mr. Fiedler's statement may be found in the appendix.]

TESTIMONY OF TOM MULLER, ECONOMIST AND WRITER

Chairman LAFALCE. Our next witness is Mr. Thomas Muller, an economist and writer from Fairfax, Virginia.

Mr. MULLER. Thank you, Mr. Chairman. I appreciate the invitation to discuss this morning a topic of great interest to many communities and small retail businesses, the rise in growth of so-called mega-stores.

I do not represent any organization or group this morning, although I have worked very closely with local governments for three decades, and can certainly appreciate the anxieties regarding this subject at hand. Some believe that the economic viability of certain small businesses is, in fact, being threatened by mega-stores, particularly those located in smaller communities.

Concurrently, we need to appreciate the fact that innovative retail practices have benefited us and have contributed to lower consumer prices.

My comments this morning will be limited to Wal-Mart for two reasons. First, it is the largest, fastest growing and most profitable of the mega-chains. They have the largest stores by far. New stores tend to average now about 110,000 square feet. They have the highest sales per square foot, where the average Wal-Mart sales in these new stores exceeds $30 million.

Wal-Mart also served as a model for other mega-chains. So we can anticipate practices of Wal-Mart will be emulated by others also seeking to profit by their experience.

Among some of the factors we see in practices of Wal-Mart are several of, I think, of note. One is one-stop shopping. New Wal-Marts are being paired with full-line grocery supermarkets which are open 24 hours a day, which of course a small business cannot emulate because there is no way a small business can stay open 24 hours a day, but all the new one-stopping stores will be. This results in sales of about $50 million, that is equal to about 100 typical smaller retail stores.

The others is combining the Warehouse Club across the street in the same parking lot with the traditional Wal-Mart general merchandise. This pairing of bulk and regular sales results in a square footage of over 200,000 square feet and sales in the range of $70 to $85 million. That is about equal to sales of a medium-sized city in the entire downtown, is one combination of Wal-Mart and Sam's.

Third, and perhaps the most interesting is the so-called carpeting phenomena of market saturation. This is to locate stores in close

proximity of each other to maximize penetration in urban and rural areas.

Here I take issue with the comments by Mr. Cain who stated that Wal-Marts are a magnet for other smaller stores. This is certainly true when there is one Wal-Mart, but when you have a situation, which you can see on this map of Wal-Marts, about every 20 or 30 miles, that concept disappears.

If you carpet an area where you have Wal-Marts or other mega-stores in close proximity, each one fully captures the market. There is no draw from the outside except perhaps small rural towns on the periphery.

So what is true of one store is not true when you have hundreds, and that I think is the basic logical fallacy in thinking about some of these stores.

Fourth, we have variable pricing, prices for some items is very even within 30 or 40 miles and prices tend to be higher where competition is limited. This again results in subsidies as was noted earlier between urban and rural areas.

Also, Wal-Mart is developing more and more specialized services. They have pharmacies, fast-foot outlets now, and tire stores and other nonmerchandised goods, so as Wal-Mart expands and it is now averaging many more square feet than even 3 or 4 years ago, it is broadening its line and it is competing more and more with other stores where in the past they have been complementing each other.

Finally, because Wal-Mart is so large, it has enormous staying power and is able to stay in business virtually under any conditions. This is shown by the fact that unlike K mart and other chains, or Ames, I believe only four Wal-Marts were closed out of 2,000 last year. So Wal-Mart keeps its operations going.

Now, one of the things that one finds is that in some States, and these are in the south primarily, Wal-Mart has captured up to one-third of all general merchandise sales. Of course, a percentage is small communities tends to be higher. Mega stores, Wal-Marts in particular, those which are in slow growth areas, and, Mr. Chairman, you mentioned upstate New York, which is one of those unfortunate areas which is not really growing well, almost all the sales in mega-stores are shifts from existing sales.

The proportion of income for goods and services purchased has been the same for the last half a century. So a mega-store doesn't really increase overall dollars spent for goods and services. It shifts allocation.

If you are in a growing area, that is fine because you can absorb the new growth, but when you are in a slow-growth or no-growth area, all those sales are simply shifts from one pocket to another pocket. Although Wal-Mart, and two other gentlemen have commented on this, are now—is the second largest employer in the country following General Motors, it would be misleading to believe that these are net gains.

In fact, probably there are fewer retail workers if you count full-time equivalent workers, not just part-time workers, employed today than there would be in the absence of stores such as Wal-Mart, because Wal-Mart sales per square foot exceed all others in the industry.

If your total purchasing remains the same but you have fewer people buying the same quantity of goods, the total number of retail workers has to decline relative to what the number would be in the absence of Wal-Mart or of Wal-Mart type store.

Finally, I would say in response to the question that you raised, that economic viability of retail stores certainly is threatened, particularly in small areas, particularly in the downtowns, including historic districts, and this is true when Wal-Mart saturates the market.

Now, sir, you mentioned New York State, upstate New York. It is interesting, because in 1 year, between 1992 and 1993, the number of Wal-Marts doubled in the State of New York, and if the strategy is followed that I see throughout the Midwest and south, one would have roughly one Wal-Mart equivalent for every 30,000 people because that is the number that you find in places like Alabama, Mississippi, Arkansas.

So again, what may be very favorable in terms of a small number or limited number of stores, when you saturate the market, you obtain a somewhat different perspective.

Let me just comment very briefly on research which has been noted here, research in Missouri. I believe, if I am not mistaken, that that research was sponsored by Wal-Mart. This is not to say that that makes it necessarily invalid, but certainly Professor Stone's work, which is not sponsored, as far as I know, by any organization, I think is much more reflective of market conditions, and I do cite his study in my testimony.

In conclusion, let me state that small communities and businesses appreciate your efforts to raise this important issue and to seek reasonable responses and ideas.

Local citizens groups are often frustrated because they lack the financial resources to question the location of a megastore or to challenge the location based upon the legal system.

They cannot afford the consultants, lobbyists and public relation firms that can be hired by others which provide a one-sided perspective on these effects.

Unfortunately, this is the situation. Small businesses cannot afford to stay open 24 hours a day. In many cases, I have been told by small businessmen what they purchase a product for, to resell in many cases, is more expensive than what Wal-Mart can sell it for in the same market.

As the pharmacy situation indicated, it may well be that once competition is limited, prices change and that is in fact part of the policy. This congressional committee remains one of the few institutions interested in specifically protecting small businesses and consumers from potentially questionable practices or monopolistic tendencies.

This committee also has a role in assuring the public that all business enterprises, large or small, have the opportunity to compete fairly and equitably.

Thank you, sir.

Chairman LAFALCE. Thank you.

[Mr. Muller's statement may be found in the appendix.]

Chairman LaFalce. Our final witness will be Lionel Diaz, representing both the Small Business Legislative Council and the Manufacturers' Agents National Association.

TESTIMONY OF LIONEL DIAZ, MEMBER, SMALL BUSINESS LEGISLATIVE COUNCIL, AND SENIOR VICE PRESIDENT, MANUFACTURERS' AGENTS NATIONAL ASSOCIATION

Mr. Diaz. Good morning, Mr. Chairman, members of the Committee on Small Business.

Let me first thank you very much for the opportunity. My association and the Small Business Legislative Council appreciate the opportunity to discuss the impact of superstores on small businesses.

My organization is a nonprofit educational group with a constituency of about 32,000 agents and manufacturers throughout the country. Manufacturers' agents, as small businessmen, to me epitomize the entrepreneurial spirit which made this country great.

Everyday without handout, without any guarantees, without any Government subsidies, these reps realize there just ain't no free lunch. They bet their time, talents and energy that they can generate enough sales to earn commissions to cover their expenses salary, put something away for growth, retirement and perhaps even health care.

Tens of thousands of small- and medium-size manufacturers throughout the country utilize this system of taking their product to market. It is only through the effectiveness and performance of these independent reps that thousands of small- and medium-size businesses can effectively and economically market their wares.

This is particularly true of new products where the high cost of salaried employees makes it prohibitive. Since manufacturers' representatives are compensated in the form of commission, not dollars, they are compensated for successes, not failures.

There is no cost to a manufacturer until a sale is made. Because they usually represent several different concerns, they further reduce the cost of sales by spreading their costs over 8 or 10 different product lines on a single sales call.

Reps, therefore, are not middlemen as the super buyers and superstores would have them be, particularly not in its present connotation. They are cost-effective and they are cost-efficient alternatives to a salaried company sales force.

With the advent of what your committee, sir, refers to as superstores, these tremendous buying powers, by reason of their sheer size through the years, have attempted to circumvent the normal chain by announcing to or coercing their suppliers into terminating all relationships with independent representatives.

To us, and courts have held it so, this is not only unethical, but it is an illegal practice and has a domino or a me-too effect on many manufacturers, not only in the retail commerce, but we have seen it come throughout industry since most products sold in these superstores are manufactured at one time or another.

As initiated by these power buyers and imitated by others in the chain, this practice significantly impairs and destroys the ability of smaller companies to compete by reducing the use of independent

sales forces. In the long run, competition is stifled and the practice greatly eliminates choices at all consumer levels.

Superstores or super buyers, as we choose to call them, convey the impression that their economies of scale make it possible for them to undersell local competitors. The savings, which are a result of their bigness and coercive acts, are in our opinion usually in direct violation of the Section 2a and 2c of the Robinson-Patman Act.

At least a half a dozen times in the last 15 years, this country's largest retailers have announced that they would do business only with suppliers who do not use independent agents. Many other retailers, as well as manufacturers in a me-too atmosphere, followed suit when this policy was imitated by buyers, both large and small. It has had a devastating effect, not only on small businesses who depend upon independent agents, but also upon the thousands of independent agents who depend on their sales ability to make a living.

Our membership of agencies range from one-person operations to dozens of employees, referred to as small business, but don't let the word small fool you.

Some of these agencies are responsible for as much as tens of millions of dollars worth of sales annually. I would contrast this with the products that are sold by a direct sales force of salaried people.

This type of marketing must include in the cost of their product the fixed overhead of salaries and expenses and the salaried person's salary and attendant expenses continue on even though nothing is sold. An agent or a commissioned representative, on the other hand, is paid only when there is a sale.

The critical point to me to keep in mind is our American system of marketing, which began before the turn of the century and has no peer group in the world, demands that someone must make a sale, someone must do the job, and that function is part of the cost of the product, whether you market toothpaste or apple juice or electric motors or whatever, the product must be brought to the marketplace. It cannot, as these superstores intimate, be done with sophisticated computer inventory systems or other electronic means interfaced with their suppliers.

Over the past few years, the emergence and proliferation of these superstores and super buyers has given the general public the impression that their efficiencies of scale make it possible for them to sell at lower price.

Most of the margin in these reduced prices have come about by cutting corners and homogenizing the country by eliminating competition and choice. Their use and abuse of power buying is deleterious to a free economy.

In our particular profession, a corner has been bent and another has been cut by coercing suppliers to eliminate independent sales agents, the false rationale being that when an agent or rep's commission is no longer paid, the price they pay for the product would be reduced to both the original buyer and hence to the consumer. This simply is not based on fact.

Manufacturers who succumb to this erroneous thinking must at some point return to servicing these super buyers through salaried company people. Over a relatively short period of time, the supplier

who has yielded to the super buyer's illegal and immoral pressures comes to the realization that competition is making inroads of these power buyers.

Finding that someone must represent their interests at the super buyer level, they are then forced to factor this service of sales costs into their product and many, gentlemen, have found that it was a wash and for most, because the multiline selling that I mentioned earlier, it was at a loss for them to service these accounts with the high cost inherent in direct factory people.

Perceived value in the distribution and sales channel is there and earned, whether it is a salaried factory person or a commissioned manufacturers' agent. It is whose value in the channel is measured correctly that should receive the final reward. A qualified manufacturers agent can serve that need equally well or better to a small or large manufacturer.

By allowing these illegal conspiracies in violation of the Robinson-Patman Act to continue, we undermine the very principle of free trade and choice which has made our country strong.

We limit commerce and we limit choice, which may reduce cost on a few loss leader products, but it will in the long run hurt the consumer by impacting competition and choice.

This fallacy of action also offers the inherent danger of handing over control of marketing, servicing and distribution decisions to a relatively small segment of our economy. The services of anyone in a free enterprise are not redundant as the super buyers would have us believe. Competition alone will eliminate redundancy, not power buyers or large discount superstores. This principle also forms the cornerstone of our Democratic free enterprise.

To allow these super buyers to continue these tactics will dry up competition and allow the power buyers to quash competition at both the small local manufacturer and retailer. Low prices then become illusory and then not only is the buyer squeezed with higher prices, but the manufacturer is stuck with a lower selling price and a decline in his profits.

The independent agent is forced out of the loop, the local distributor is cut, the local small retailers fold up, and as a result, everyone in the chain is hurt, including the consumer.

Competition is the very foundation and strength of our economy. This country's future growth, as most of us have learned in recent years, is in small business. The activity of these superstores and power buyers, from Wal-Mart and General Electric on down to the small manufacturer who have attempted to imitate their big brothers, results in unfair practice and competition that is, to say the least, predatory.

Early in 1992, our association, on behalf of the entire community of manufacturers' agents, sought an audience with one of these power buyers. Their refusal to answer our plea forced us to file a complaint with the Federal Trade Commission.

Legal action has also been successfully taken individually and collectively against such unfair predatory practices. It is more than a moral issue of hurting my constituents and other little guys involved. It is an activity that warrants enforcement of present legislation by the Justice Department and a broad and complete investigation by your august body.

Speaking on behalf of the Manufacturers' Agents National Association and the Small Business Legislative Council, of which we are members and founding fathers, we offer you our thorough cooperation.

Thank you once again for the opportunity to present the views of not only our membership, but of all manufacturers' representatives and small businesses throughout the country who utilize their services and take their products to market.

Thank you.

[Mr. Diaz' statement may be found in the appendix.]

Chairman LaFalce. I thank all members of the panel for their fine presentations. There are clearly some choices that the individual consumer has to make.

If your interest is primarily price, then you go to a place where you are going to be able to buy the product you desire cheapest. But there are so many other things that the consumer might like, too. He might like a salesperson who will be there, who has some knowledge of the product and knowledge of the area, who will be there in the future.

Service might be important, present service and expectation of future service perhaps, from the same person, et cetera. The consumer might want a low price immediately, but might also want to deal with someone who is actively involved in the community.

The problem is sometimes a consumer doesn't have a choice because a big superstore can cause a good many small businesses to go out of business—not always, but in my judgment, all too frequently, leaving too many vacant stores, boarded up windows, a landscape across downtown Main Street in Small Town America that is devastating.

Assuming this to be the case, the question is what can we do about it within a free enterprise system? I think the role of Government is somewhat limited. It seems to me that we have at least three things though that we might be able to do: Bring attention to the reality that is taking place across America, because as more people are aware of it, perhaps they can mobilize their resources to deal with it in a manner that is appropriate to their community and it might differ from community to community.

Second, consider sources of Federal revenue that may be assisting a type of behavior that we are not too fond of, such as one of you mentioned, the use of industrial revenue bonds for what most would say is an inappropriate use and that is retail commercial stores.

Third, an inquiry as to whether the existing antitrust laws on either a Federal or a State basis are, A, adequate; and B, with respect to most laws that exist, adequate or inadequate, being enforced appropriately either by, A, the FTC; or B, the U.S. Department of Justice.

Are there any other areas of pursuit that would be appropriate for Federal legislators?

Mr. Diaz. Mr. Chairman, it is probably not a function of this committee, but I would say that for small businessmen, it is impossible to fight the big guy over the present legislation.

As I mentioned, 2 years ago, we filed a complaint with the Fair Trade Commission against Wal-Mart. One of our members pres-

ently has a suit pending against General Electric Company for tortuous interference with a contract.

For this little guy whose sales are several million dollars a year, it is impossible to fight General Electric. By the time they get delays, it will be 5 years before it gets to court.

I don't know what the committee can do about that except to jack up the Justice Department to enforce present laws.

Chairman LAFALCE. By present laws, you refer to antilaws and most especially the Robinson-Patman Act; is that correct?

Mr. DIAZ. And tortuous interference with contracts. Now, that is probably at the State level.

Chairman LAFALCE. That is not a Federal law, as I understand it, in most instances. Some members of the committee, myself and others, have attempted to create a contractual relationship that must exist between franchisers and franchisees, but even that has been having difficult sledding.

I think it is imperative, but we are not talking about that issue here. We are talking about something totally different, tortuous interference. Historically, that has been a sole prerogative of the States, but that doesn't mean that the Federal Trade Commission couldn't inquire into it, couldn't issue studies and reports concerning it, couldn't work cooperatively with the States Attorneys General and private parties.

It would seem to me that there could be leadership provided by the Executive Branch of Government in that direction if, in fact, the facts did warrant it.

My time has expired.

I call on Mr. Torkildsen.

Mr. TORKILDSEN. Thank you, Mr. Chairman and thank you for holding this hearing today.

I found the testimony quite interesting and I notice Mr. Rector is not back yet, but perhaps Mr. Fiedler could correct me if I misunderstood what he was saying. He said that there are in some foreign countries bar code labels put on products so that they have the same price everywhere in the country.

I thought I heard Mr. Rector say that his complaint was that they had different prices throughout the country and in some cases different prices in the same State.

Mr. FIEDLER. No.

Since I was submitting my statement for the record in my written testimony, I confined myself to private label products, which is an increasing percentage of what the superstores are doing, but what Wal-Mart or K Mart would source themselves. They control every aspect of that process overseas, so I was limiting it to just private label product.

Mr. TORKILDSEN. Which do you think is worse, charging the same price or charging different prices?

Mr. FIEDLER. I think that the overseas private label pricing is worse. I don't think that there is any reason why a worker in Mississippi should be subsidizing someone's product in the State of Illinois, because they always lose in that subsidy arrangement. They never benefit.

Mr. TORKILDSEN. Having different prices to reflect the different wage scales that are not only in different States, different areas within a State——

Mr. FIEDLER. Cost of doing business, not just wage scale; shipping to Mississippi versus shipping to Illinois.

Mr. CAIN. I would like to respond to that. I think you have pointed out the inconsistency among the witnesses, Mr. Torkildsen.

On the one hand, the county judge in Arkansas in the druggist case looked at variations in price for health and beauty aids in different locations of the State and from that inferred a predatory pricing intent.

Where on the other hand, Mr. Fiedler thinks that it is somehow unfair to have differing prices or rather to have a uniform price, and not to have something, I guess, akin to the Council on Wage and Price Stability formula for identifying all the input factors and coming up with your allowable price.

In fact, the existence of different prices in different markets generally recognizes competition in market. That is the way that a free market pricing system works. Local competition determines the price.

I am speaking for the entire industry rather than particular companies, and different companies do it different ways. But the way that Wal-Mart does it, to my understanding, since that has been raised, is that they attempt to establish their uniform low price.

However, individual store managers are given permission to lower prices to meet or beat local competition. That is not surprising.

We read the newspapers and we see Hechinger's and Home Depot and Lowe's comparing their add-on items. That is the way that it works. You may advertise that you meet or beat prices.

Mr. TORKILDSEN. Mr. Muller, did you want to say something on that?

Mr. MULLER. First of all, I am not sure the two are inconsistent because what you in reality find is that because markets in larger urban areas are more competitive, an item in Leesburg, Virginia will sell for less than in South Boston, Virginia, where there is much less competition.

So you have a transfer where you essentially, on the average, are typically paying more in the small community for a product even though the average wage scale may be lower. So you essentially have a situation of the smaller community bearing some of the cost of a larger area.

I am not sure these are inconsistent and, in fact, it does show, I believe, a significant problem, which is when you have one or two large superstores essentially having a disproportionate share of total sales, they can raise prices without the fear of the competition, they would have, let's say, in Fairfax County or in Prince William County or in Montgomery County.

So we see a problem of a quasi-monopolistic situation potentially arising in smaller markets. It is true that people could shop 50 or 70 miles away, but that may not be practical.

Mr. TORKILDSEN. The follow-up is, if on the one hand the same price is unfair, on the other hand different prices are unfair, I am certainly no fan of additional Government intervention, but what

would be suggested for a remedy if both could be unfair in different circumstances?

Mr. MULLER. I think what is happening is that when you have a private label, that label is unique to that store and, therefore, you can sell the product across the line nationally.

It is not a competitive market. It is not a brand name. We are dealing with two different phenomena.

Mr. FIEDLER. I am not suggesting Government intervention in the pricing of private label products. What Mr. Rector was talking about, predatory pricing, I would suggest court intervention as the law exists. They are two different things.

Mr. TORKILDSEN. I will finish with a general comment.

I don't know the history of some of the companies that are being discussed here, but my inkling is that some of them started out as small businesses and while we don't want to have an unlevel playing field, we want to foster competition.

I don't want to see a penalty for a company being too successful. It does employ more people and I don't want to see the pendulum swing so far that we penalize those companies and those employers that are very successful. I think we still want to encourage success and employment.

Thank you, Mr. Chairman.

Chairman LAFALCE. Mr. Mfume?

Mr. MFUME. Thank you, Mr. Chairman.

Let me also say how pleased I am that, in fact, these hearings are taking place and particularly this topic is being addressed. It is a rather interesting set of testimony and, Mr. Cain, I am sorry I was not here for yours. I have been trying to read as much of it as I can.

It seems like there are several major issues that are before us. There is the labor issue and its effect on workers and the ability of workers, the whole issue of commerce in terms of what this allegedly is doing to the ability of small businesses to compete in a free and open marketplace.

There is the whole issue of the central business district, which I am glad is a part of this, and how it impacts on historic preservation and what impact that has on the larger cities and the surrounding counties that are dependent in most cases on the cities, and then there is the issue of free enterprise.

If we are to be governed as a society, as we have been for the last 200 years, with as one of our bedrock principles, the notion that you can go into business and, yes, you can be competitive and yes, it is all right to increase your margin of profitability, is something all together wrong with that all of a sudden?

Those are rather different and divergent issues that I think are all called into question somehow respectfully as a result of these hearings and as a result of your testimony.

I must admit that aside from being fascinating, it is also baffling because I think I understand the perspective that each person has offered this morning. I didn't know and I guess the more I listen, I am understanding now the sort of impact that goes out from the initial topic of today's hearing, the fact that we are talking about really small businesses and workers and U.S. jobs and the elimi-

nation of competition and independent sales agents and retailers and wholesalers and the effect on buyers.

Listening to some of the testimony I think like other members of the committee said; I can understand that. So I am going to just hope that we have a chance to do a couple of rounds of questioning, Mr. Chairman. I want to be more philosophical and broad based in my initial remarks knowing that I don't have all the answers, but recognizing that there is a very serious problem.

Just the notion about marketing decisions—and I hate to go back to Wal-Mart, but since that has been the company that has been raised over and over again, the fact that they have made a decision to locate adjacent to 24-hour shopping centers, a bell went off in my head because I am thinking of Western Baltimore County, a place that I represent and an area I go by every day where there was a great deal of competition for this parcel of land, which used to be a Montgomery Ward store that closed up because they couldn't survive. Wal-Mart has it, has knocked down the entire store, building from the ground up adjacent to a 24-hour Giant supermarket.

When we hear this testimony, we can relate to some of it.

My time is quickly getting away and I should be using this for questions and I will do it the next time around. I would like to ask you to give some thought to the idea of predatory pricing which I would like to explore and to talk about its effect in triplicate, what it does to other stores of that size and magnitude, what it does generally to small businesses, and what it does to minority businesses who oftentimes impact it just as much, if not more.

So I would yield back and hope and anticipate we are able to get through a couple more rounds so I could ask questions and pursue some of those ideas.

Chairman LaFalce. Mr. Zeliff?

Mr. Zeliff. Thank you, Mr. Chairman. I congratulate you for bringing this very interesting hearing.

I hope we will have another phase and if we are able to, maybe have some small businesses that were affected successfully by the introduction of a superstore in a particular community and maybe some small businesses that went out of business, if we could get them so we can see their balanced approach.

We have here the retail druggist and we are getting a very valuable point of view, but I think in the next phase, it might be interesting to include that, for what it is worth.

Being in retail for almost 20 years of my life, and I was in the automotive end of it where we sold automotive products traditionally with manufacturers' list prices before the discount business came in to the degree that it is today, I guess one of my questions would be, we are not suggesting, I don't think, to go back to those days, are we?

Does anybody have a comment?

Mr. Cain. No. You can't go home again.

Mr. Zeliff. I don't think we could if we wanted to.

Mr. Diaz, I have known many mass merchandisers and always met a lot of manufacturers' reps along the way.

I assume that there are still many reps selling to these major discounters; am I correct?

Mr. DIAZ. Yes, sir. You are correct. However, and I hate to keep picking on Wal-Mart but Wal-Mart has tried these tactics on several occasions. When they dangle the carrot in front of the small manufacturer, he grabs at the opportunity to increase his sales.

When they get him by the hair, they have control of his company and they tell him, "No independent sales agents will call on us." They have tried it on at least three occasions and it is not a phenomena to me that each time we have fought them, they have backed away from that practice.

Mr. ZELIFF. Is there a law——

Mr. DIAZ. Yes, sir; Robinson-Patman 2a and 2c.

Mr. ZELIFF. So you feel that they are violating that relative to telling you that they do not want manufacturers' reps calling on them?

Mr. DIAZ. By expecting to get the commission in the form of a lower price; yes, sir.

Mr. ZELIFF. One of the things that I need to do is a little homework on Robinson-Patman and also some of the predatory practices that you all are—I will do that homework before the next hearing, Mr. Chairman.

Chairman LAFALCE. If the gentleman would yield, how many lawsuits have been brought in the past several years under Robinson-Patman against superstores allegationing violations of these particular sections?

Mr. DIAZ. None that I know of, sir. I know several people have filed—there is a member of the group called CASE, Coalition for Americans to Save the Economy. We have filed several complaints with the Fair Trade Commission, but it is almost impossible for the small businessmen to file suit. It is just utterly impossible.

I know of one case within the last 6 months where Wal-Mart was fined several million dollars for their predatory pricing against three retail druggists in Arkansas.

Mr. ZELIFF. Could you give us any information that you can maybe later?

Mr. DIAZ. Sure.

[The information may be found in the appendix.]

Mr. ZELIFF. This is very interesting and I would like to do additional studying. I wish Mr. Rector was here, relative to health care, some questions that we would have.

Our pharmaceuticals—for example, everybody is talking about the high cost of pharmaceuticals and here again we are saying well, in order to bring those costs down through the traditional channels versus the discount channels, certainly one way to do that would be to allow greater competition and greater competition brings lower prices, but I guess—I will just ask this question if anybody cares to comment. It would logically be directed toward him.

Are there other competitive factors besides the appearance of discount stores that might affect small pharmacies? For instance, what has been the impact of mail-order pharmaceutical sales through AARP and others? Have HMO's and managed care plans affected the operations or profits of independent pharmacies?

I don't know whether anybody is in a position to comment on that.

Mr. CAIN. I think there is an undercurrent or an assumption in some of the testimony today that if a small business fails, it must be because of the larger competitor, whereas in retailing, as volatile and as competitive a business as it is, you can find failures before the—before discounters existed, people were going in and out of business in retailing.

I found a 30-year old article from a trade press that was complaining about the independent department stores in 1930. Twenty years later, 60 percent of them were gone. There weren't even any discounters in existence back then.

It is just a very competitive business by its nature. You have to respond to what the customer wants, where the economy is going, where folks are going, all sorts of factors.

Mail-order, clearly the change of some prescriptions to over-the-counter, the existence of new competitors in a lot of these markets for example, 10 years ago, you didn't find many discount stores that had pharmacy departments. You find a lot now.

You find more of the traditional pharmacies. You find a blurring of lines. They will carry general merchandise and foods.

Mr. ZELIFF. The reason that that has happened particularly relative to pharmacies is it is customer driven, is it not?

Mr. CAIN. It is customer driven, and the company knows, particularly with the trends toward one-stop shopping, that if you have a pharmacy there, you will draw traffic and they will buy pork chops while they are filling the prescription or they will buy antifreeze or whatever you happen to be selling.

One of the practices that was complained of, for example, in the Arkansas County case was a $5 free prescription certificate. You can't get a lower price than free, but that is traditional for a new company or a new round of price competition in a market.

You lower your price. You give things away. You get people in your store exposed to your service and your product; that is the way the market works.

Mr. ZELIFF. In our business, I happen to be now in a small business with a country inn and also another restaurant, so I guess that is the restaurant business.

A new guy comes into town. It makes us all sharpen our pencils. The first thing I do is talk about how we can be more of service, more competitive, what we need to do to keep our market share. The new guy comes in with a $9.95 dinner. He knows what his worth is. We don't cut our prices and usually we survive because we have the best meal out there.

That simplifies it, and I think the labor problems are important, all the pieces that are here. It is a fascinating issue for me, and I would like to see us do another panel.

Mr. FIEDLER. Wal-Mart—and excuse me, the figures may not be exactly correct, say 10 years ago—might have done $20 billion a year. Last year they did $67 billion. If I am to believe that the $47 billion difference didn't drive anybody out of business——

Mr. ZELIFF. But what happens is Wal-Mart may have phased out some of their own kind of discounters, and I can tell you some. Hechts in Charleston, West Virginia was very successful. I called on them. They are no longer there. They went bankrupt.

The inefficient loses. The efficient survives.

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Mr. FIEDLER. At what point does huge size become relevant to the ability to put somebody else out of business very quickly? That is what the whole Government history of antitrust monopoly, predatory pricing, Robinson-Patman is all about. I would say to you, sir, that it is not simply stupid, small businessmen going out of business.

Mr. ZELIFF. Please don't refer to small businessmen. I am one and I don't consider myself stupid. That is not my implication. I am a strong fighter for small business. I would like to get away from the labels.

Chairman LAFALCE. Let's stick to the issues.

Ms. Velázquez?

Ms. VELÁZQUEZ. Thank you, Mr. Chairman, for this very important hearing. It has been a great experience for me.

Mr. Cain, you point out in your testimony that superstores offer greater consumer choice, employment, income growth and an improved economy. I am curious to know how many employees of the big chains are minimum wage employees? How many employees are part-time and what do the employees have to look forward to in the way of advancement?

Mr. CAIN. I am going to try to give you as much of an overview as possible because the practice is obviously going to differ from company to company and even within a company from market to market.

Wal-Mart, for example—and I think it is indicated in The New York Times article reprinted—hires no employee at the minimum wage. The average wage in retailing, general merchandise retailing, is about $7.30. Now there are a number of jobs that are at or near the minimum wage, particularly for entry-level workers, low-skilled workers.

The fallacy that I think some folks labor under is that once you are hired at that wage, you stay there for the rest of your life, the rest of your career. In fact, again taking Wal-Mart only because I am familiar with their number, of their management, close to 60 percent of them started as hourly store employees.

There is substantial opportunity for promotion and advancement. In addition, for a full-time employee in that company, the ratio is about 70 percent full-time to 30 percent part time.

There is a fairly good benefits package. Mr. Fiedler might draw the benefits package differently than the company chose to and in some aspects, it may be inferior to some of the plans he is familiar with. In others, it is superior—dental, medical, paid leave, vacation, profit sharing, store bonus, stock purchase plans—most of the larger companies offer some or all of those.

There are some incorrect numbers in Mr. Fiedler's testimony as well. The deductible for a single person under the Wal-Mart health plan does not range from $750 to $3,000. That may be the family deductible. The individual is $250.

You actually have a choice of four plans. The lowest deductible is $250; the highest is $1,000. That is basically a catastrophic plan that many of the healthier, younger workers elect.

Ms. VELÁZQUEZ. Mr. Muller, could I get your comments?

Mr. MULLER. I think it is correct that Wal-Mart doesn't pay the absolute minimum wage, but I have interviewed a number of Wal-

Mart workers in Virginia and the wage is barely above the minimum, \$5.50 or \$6 an hour, going up somewhat for more experienced workers.

As noted earlier, the definition Wal-Mart uses for full time is 28 hours, which I think most people would consider to be part-time. I think the 70-30 split, I believe, assumes a 28-hour week to be full-time.

There is no question that small businesses do offer more opportunities for advancement than large businesses. This is not to say that not only because there are more managers, but the ratio of assistant managers to employees is very low so that the probability of an hourly worker becoming a manager are really low.

Ms. VELÁZQUEZ. Mr. Cain, in your opinion, how much responsibility do mass retailers and superstores have to provide health insurance to their part time employees?

Mr. CAIN. I think that most of them do. Part-time?

Ms. VELÁZQUEZ. Yes.

Mr. CAIN. Part-time employees, most of the part-time employees in a mass retail store are working part-time by choice. There are a number of reasons. It is often a parent that has child, responsibility for school-age children or a worker who has a second job.

The majority of the part-time workers, we believe, are already covered under a spouse plan, a parent plan or, for example, a teacher working summers remains covered under the teacher's plan or people working weekend hours after work, second jobs are already likely to be covered.

So I think even of that 30 percent of the part-time workers—by the way, that is where the 28 hours comes from. You are eligible for full benefits if you work as few as 28 hours, so rather than being some kind of scam on the employees, that actually opens up the benefits. As far as part-time workers, they are eligible for some benefits, and many of them are already covered for health care under other coverage.

Ms. VELÁZQUEZ. You will support universal coverage?

Mr. CAIN. We certainly look for a number of reforms. We think there are a lot of things we could do that will hold our costs down. Our question on universal coverage is how it is achieved and at what cost and what the employment effects of that are.

Ms. VELÁZQUEZ. Thank you.

Chairman LAFALCE. Mr. Collins?

Mr. COLLINS. Thank you, Mr. Chairman.

I have a brief statement I would like to enter into the record.

Chairman LAFALCE. Without objection, so ordered.

[Mr. Collins' statement may be found in the appendix.]

Mr. COLLINS. I appreciate these gentlemen appearing this morning and testifying about the effects of superstores on small businesses. I was in the retail business for 12 years and operated a supermarket in a small town.

The theory is that the best place to be in a small town is downtown. Often in rural areas, that business is centered around a courthouse square where all your retail outlets are located and most are locally owned. Once a big retailer comes to town, they will locate on the outskirts of town and during the adjustment period in the time, about a year or two after then, there will be a number

of those small businesses who are located around the square that will close up because of lack of funds and lack of business and lack of having the wherewithal to stay during that adjustment period.

I can feel for those small retailers. I have been in that position. Also, in the area, there are major corporations who will come to town also and put up locations and primarily in the oil business, retail gasoline, that have not only the retail but the wholesale end and I think that is where some of your predatory pricing comes in, squeezing out maybe a small independent station.

Mr. Chairman, you mentioned your three approaches to paying attention to this problem. The second would be Federal revenue assistance. You referred mainly to the bond issue, issuing revenue bonds for construction. But there is another area that oftentimes the Federal Government will get involved with in retail business.

I wish the gentleman from the retail druggists was here. One of those areas is in the Employee Prescription Drug Program, the Federal employees. Due to some regulations, many of the small-town retail druggists are not even offered or they are at a disadvantage of participating in that particular program.

There may be State laws or State regulations that differ with the Federal regulations pertaining to the retail business. An example is in Georgia.

There is a certain amount that is set for each prescription paid through Medicaid by Medicaid to a druggist to fill prescriptions, but due to the Employee Prescription Program, those prices are set lower than that State requirement or that State amount that is set. Yet, the disadvantage is that the local retailer in that community has to sign an affidavit with the State of Georgia that he will not sell below what he sells based on the Medicaid structure.

But a store or a superstore such as Wal-Mart, who is located in a different State, does not have that problem, does not have to sign that affidavit, and can price through their base and just really undercut that local retailer or local druggist out of the picture. That is happening more and more.

I notice some of the co-ops, rural electric membership corporations setting up programs where they offer their membership an opportunity to enter into an agreement where they can purchase drugs through a certain program at a discount.

My statement was that the intent when we set up the rural electrification program years ago, was to offer them down the road the opportunity to put in co-ops to retail or to offer merchandise. Where will this go next from drugs—to clothing, our automobiles? Where does it stop?

I don't know. I don't know if we have the answer today, but I am glad you are bringing this to our attention. I think it is commendable of you. I have a particular druggist I would like to bring in from rural Georgia to tell you his side of what is going on.

Chairman LaFalce. You have touched on a subject that is a particular sore point with me. Out of economic necessity, I am forced to send away in the mail to—I have forgotten whether it is Florida or Texas—any time I want a drug. I have the option of going to a nearby pharmacist, but it is not a financially realistic option because it would cost me far more than sending away paying what used to be $5, now $12 for a 90-day supply.

So in effect, that pharmacist's business, who I would like to have gone to, has been taken away by the insurance policy that I have opted into under the Federal proceed employees plans. That is a real concern to small businessmen particularly the druggists across America.

Mr. Poshard?

Mr. POSHARD. Mr. Chairman I have an opening statement I would like to submit for the record.

Chairman LAFALCE. So ordered.

[Mr. Poshard's statement may be found in the appendix.]

Mr. POSHARD. I am not sure who to ask this question, and I apologize for coming in late to the hearing, but to whomever can answer it: Where do the superstores bank? I represent a rural area and one of the most difficult problems that we have is capital in our local financial institutions to finance small business or industry that might be considering moving into the community.

So the support of our local financial institutions is always a question, and with the rise of the superstores and other large retail outlets, I am just wondering, does that money stay in the local community? Does it go back home?

Somebody help me out on that. Does it go back to the home area? I don't know where it goes.

Mr. FIEDLER. My experience in Wal-Mart is paychecks for employees come from the Bank of Bentonville which is owned by the Walton family. At the most, you have some overnight money, short-term deposits before they can ship it to a bigger bank and then back to the Bank of Bentonville.

Mr. MULLER. That is my understanding also. In fact, one of the issues of Vermont has been the fact that—again we are talking about Wal-Mart, but it pertains to others—that because they have such centralized operation, there is no secondary economic effect from their presence.

Even though the prices may be on the average slightly lower, that is offset by the fact that you have very little advertising in the local markets. The local newspapers do not benefit.

The banking is typically centralized and in general you don't have the secondary economic interaction when you have a very centralized operation. Wal-Mart has approximately 18 or 19 major distribution centers, but they are located sometimes a hundred, 200 miles from where the retail store is. All the activity is very narrowly focused in a few geographic areas so the individual Wal-Mart stores, including Sam's, have little interaction with the communities and that is one of the difficulties that one perceives.

A small business where the owner is in the community tends to sponsor a boys' club, tends to do things within the community, that rarely happens, I am told, by people, at least in Virginia, with Wal-Mart.

So I think in addition to price, we do need to take into account the other secondary economic consequences of this type of operation.

Mr. POSHARD. Mr. Muller, in your judgment then, there is not a sufficient enhancement of the moneys that may accrue to one of the mega-stores, to the local financial institutions that would help them build the community in other economic ways?

Mr. MULLER. There is certainly less of it than there would be in a typical situation of a nonmega-store.

Mr. POSHARD. Mr. Cain, you have another view of that?

Mr. CAIN. I do.

While I do not know the answer to your banking question and I will see what I can find on that, I would imagine that for as large an organization as you are talking about, you probably do have payroll centralized. You may have Treasury funds centralized as well.

However, I would take issue with the assertion that the mass retailers are somehow less involved in their communities. I think there is a very clear record that they are involved in a variety of civic, charitable, disaster relief, you name it.

As a matter of fact, in the example of Pewaukee, Wisconsin that I cite in the testimony, you ended up with the Wal-Mart manager on the Town Redevelopment Revitalization Committee. That is not unusual.

The stronger the community is, the better it is for the mass retailer as well as for the others there.

[The information may be found in the appendix.]

Mr. POSHARD. Well, and I am not contesting anything here. I think that is commendable that Wal-Mart and others do get involved in the community. I am just talking about in terms of the economic growth potential.

I would think if we investigated whether or not these gentlemen's assertions were correct, and they were correct, then you might want to suggest to the people who you represent that maybe we ought to find a way to invest more of those profits in the local community and other ways.

I know Wal-Mart people where I live do get involved in community activities of a charitable nature and that sort of thing, but the economic activity itself needs some buttressing in the rural areas and that might be something for us to take a look at.

Well, one more, Mr. Chairman? Thank you.

I am not sure who had this in a report, but with respect to this statement, it says, Wal-Mart has become a leading employer in the Nation with over .5 million workers, a seven-fold rise in a decade, however, it would be a serious mistake to conclude that these jobs are net additions to the work force.

Would someone clarify?

Mr. MULLER. I did, sir. Yes, sir. The point, sir, is that it has been argued that Wal-Mart, for example, is a producer of additional jobs that have come into growth. The point that I make is that those jobs are transfers from other stores.

When purchasers for goods and services is a fixed percentage of income, retail doesn't produce additional purchasing power; it shifts it, and to the extent that Wal-Mart happens to have sales for employees much higher than typical stores, both small and large, in reality it takes fewer employees on a full-time equivalent basis to sell the same quantity of goods as would be the other situation.

This is not a criticism because I think clearly you can have an effect on prices, but the concept that has been advertised that Wal-Mart or other such stores produce jobs is, I think, an incorrect assumption. In fact, there is no evidence that they do.

Chairman LAFALCE. The time of the gentleman has expired. I am just going to comment.

I do not have any empirical data for what I am about to say, and so if any of the panelists can help me because of their awareness of studies that could shed more objective insight on this, please do so, but it is certainly my impression that the level of community involvement of the superstores in comparison with the level of community involvement by individual small business owners pales in comparison.

The individual small business owner is the member of the Rotary Club, the member of the Kiwanis Club, the member of the Downtown Merchants Association, is usually the individual who assists at the fund-raiser for some charitable cause, grilling the hot dogs, whatever it may be, and it has been my experience that not only with respect to superstores, but with respect to the growth of franchising, that you have not seen anywhere close to the community involvement by the superstores or the franchisees.

Usually these franchisees have 4 to 10 different franchise operations. They live miles and miles away, and they just can't have that same type of involvement that an individual store owner could. Usually these superstores, it seems to me, have managers who have been brought in from out of town who will only be there for a relatively short period of time and who do not have that much of an interest, who collect moneys every year and make some $10,000 contribution to a local charity, and that is it.

Now, there have been some exceptions within my own personal experience, I am aware of that fact, but that is my impression of what the general rule has been. I cannot document this. I cannot give you, other than anecdotal information, but I am asking you if you know of any studies that either reinforce or contradict my conclusions based upon the anecdotal information I am aware of, please submit them to the committee.

Mrs. Clayton.

Mrs. CLAYTON. Thank you, Mr. Chairman. I too wanted to thank you for bringing this suggestion up so we could have an opportunity to begin to see how superstores or mall development or franchising may be compatible with opportunities of small business, particularly in rural areas. I think the Wal-Mart phenomena in a rural area is not unlike in some way the malling of America in terms of what happened a decade earlier. My background is planning, so I am familiar with the demographics and we have shifts in terms of the development.

I was struck, I guess, Mr. Cain, earlier when I was here that you had indicated a study, I think it was the University of Missouri where you looked in 1991 at some economic indicators. Do you recall if—what were the indicators, please?

Mr. CAIN. They are actually listed in the——

Mrs. CLAYTON. What page?

Mr. CAIN. It is at the end of—it is right before Attachment C, which is the magazine article, it says Wal-Mart on it, the page before it labeled at the top, Table 3 that lists—there is a chart with a listing, 18 indicators on the left-hand side. It is marked as page 14 with the end Attachment B.

Mrs. CLAYTON. I don't see it, but at any rate——

Mr. CAIN. It looks like this. It is at the end of a lot of very dry description of the——

Mrs. CLAYTON. Let me get to the point. One of those indicators, the wealth transfer as in terms of investment or taxpaying, did you show your establishment—you track the wealth that you are bringing in in terms of the tax, feeding into the local taxes?

Mr. CAIN. Indirectly. There is payroll.

Mrs. CLAYTON. Which one of those indicators show that?

Mr. CAIN. The closest you come to that is payroll, which is the third indicator. As far as total tax collections or sales tax, you have got wage and salary and you have got payrolls, but you do not have that quite as neat as you would want to have to get the information that you are looking for.

Mrs. CLAYTON. Because one of the values of small businesses is in addition to giving employment, which is a very, very important aspect is also the wealth that is in a community. The local store owns the store and may own some other things as well, and therefore he transfers it, in addition to the bank deposit, but it is called a transfer of wealth.

Mr. CAIN. Real personal income for the county goes up and goes up higher in counties with the—with a mass retail store than in counties without one. That is the first indicator. I am sorry, the second indicator, real personal income. But again, that doesn't show what I think you are asking, which is the distribution within the county.

Mrs. CLAYTON. Right. Right.

Mr. Muller, could you comment if there is any coexistence or any balance that people who are interested in rural development should seek as we try to move in a—both in a competitive way, but also in a sustaining way of what we know in our rural areas?

Apparently this is not going to go away, so is there any guidance as we seek to have a quality of life as to where we could have some coexistence that allows for the survival and growth, other than what Mr. Cain says that are special and the niche, but there are other considerations beyond what he suggests small business should do?

Could you comment on it?

Mr. MULLER. Well, maybe just in general. Certainly I would support the suggestions made just in terms of the Government that—in terms of HMO's for drug pricing, for example, in terms of using taxes and bonds for——

Mrs. CLAYTON. HMO's?

Mr. MULLER. Tax exempt bonds.

Mrs. CLAYTON. Oh, tax exempt bonds, excuse me.

Mr. MULLER. I think those practices should not take place, because they put the rural area at a true disadvantage.

Mrs. CLAYTON. Because they are paying for that?

Mr. MULLER. They are paying for it. The Federal Government, States, localities invest in the downtown areas through the tax base, and you shouldn't have on the other hand the Federal Government or some other Government going the other direction, so certainly to make things equal, those practices I think should not be carried forward.

That would probably be the one method of doing it. the second, which has been suggested here, which is a legal issue, is predatory pricing, the idea that in the rural area, a superstore such as Wal-Mart may be capturing such a large share of the market that it can really essentially price things at whatever level they feel is proper brings the question of having a quasi-monopolistic situation. So I think those are certainly areas where certainly this committee needs to examine further.

I think we are all for competition and we certainly can't restore the rural America of the 1920's and 1930's. On the other hand, I believe the balance right now is tipped in the other direction of placing rural areas at an economic disadvantage in this and other matters, and I think we do need to have a more equal playing field.

Mrs. CLAYTON. Do you share the good news of H.R. 2243 that that would take care of the predatory pricing?

Mr. MULLER. I frankly do not know enough about the legislation to be able to comment about that.

Mrs. CLAYTON. How do you feel, Mr. Cain? Does your firm support H.R. 2243?

Mr. CAIN. Actually, I don't believe we have looked at it.

Mrs. CLAYTON. You didn't look at predatory pricing, any of that?

Mr. CAIN. No. I believe that is asking the FTC to report on predatory pricing, which they have routinely done for many years. The basic problem with the predatory pricing argument, and I think it is reflected in some of the fairly imprecise language we have heard today, is the careless use of terms like monopoly.

I don't know of any market in the country where there is only one seller of shampoo and toothpaste and the kinds of things we are talking about here. As a matter of fact, I think even in the Arkansas case, if you looked——

Mrs. CLAYTON. Is there a similarity in predatory pricing in dumping, international?

Mr. CAIN. It is the basic idea, sales below cost.

Mrs. CLAYTON. Apparently my time is expired.

Chairman LAFALCE. You are right on the borderline, but the difficulty is that we are on the borderline of making the vote. We have about 4 minutes to make the vote and because of that, I will thank all the panelists.

I think all your presentations were excellent. You have certainly given the Small Business Committee and the United States much food for thought regarding this phenomenon of superstores, and its impact on the small business community, its impact on downtown America, especially in smaller cities, towns, and villages across America. Thank you very much.

[Whereupon, at 11:26 a.m., the subcommittee was adjourned, subject to the call of the Chair.]

APPENDIX

Thank you Mr, Chairman for holding this hearing. Studying the impact that large chain stores have on small businesses all across the country is an improtant issue. This is an opportunity for us to examine closely whether these large stores have an unfair advantage over their smaller counterparts; and whether this advantage was prompted or created in some way by the government -- whether through tax codes or regulatory enforcement.

There are problems like this for small business in all industries. In my district for example, small family-owned pharmacies are at a disadvantage with prescription drug wholesalers, as well as the federal government who tend to contract exclusively with large drug store chains for discount prices on drugs. This practice often eliminates a majority of the business available in rural, scarcely populated areas; and will eventually drive these smaller retailers out of business.

Thank you Mr. Chairman, I look forward to the testimony.

Statement of

HONORABLE JOHN J. LaFALCE, CHAIRMAN

Committee on Small Business
U.S. House of Representatives

Hearing on

The Impact of Discount Superstores on Small Business and Local Communities

August 10, 1994

During the past decade American retailing has changed significantly as a result of the rapid growth of discount "superstores". The superstore phenomenon includes a variety of retail formats, including well-known mass merchandise retailers like Wal-Mart, Kmart and Target and regional general retail chains such as Ames, Jamesway, Bradley, Consolidated, Caldor and others. More recent forms of superstore chains include discount warehouse clubs, such as Sam's Club, Pace, BJ's Warehouse Club and Price COSTCO, and a wide variety of so-called "category killer" chains, like Toys R Us, Circuit City, Home Depot, Sports Authority and Best Buy, that specialize in specific categories of merchandise.

All these retail operations share a common strategy of competing aggressively to capture an increasing share of local retail markets, emphasizing broad product selection, sophisticated distribution and inventory systems, extensive advertising and, some say, cutthroat pricing. Competition by retail superstores affects all segments of the retail industry, from department stores to supermarkets. Wal-Mart has revolutionized the way rural and small town America shops, bringing wider product selection and lower prices. Warehouse clubs have forced supermarkets to change the way they do business, and specialty chains have reduced the variety and cost of goods sold in traditional department stores.

In general, discount superstores have been highly successful in delivering the thing consumers want most--quality products at low prices. They also have been responsible for major innovations in retailing, particularly in the use of technology for more efficient management of product supply and distribution. Their focus on efficiency has squeezed costs out of our system for distributing consumer goods by forcing manufacturers to streamline operations, competing retailers to reduce costs and retail workers to increase productivity.

Nevertheless, the expansion of superstore chains has created significant controversy and opposition. In the past year, an increasing number of press articles have questioned the practices of superstores and documented the efforts of local civic and business groups in Vermont, Massachusetts, New York and elsewhere to halt new superstore development. Press reports describe communities in which numerous businesses fail following the opening of a superstore, leaving main streets lined with empty buildings and towns depleted of their commercial life and civic leadership. There are growing complaints that superstores engage in a variety of questionable practices, including predatory pricing, unfair labor practices, unnecessary duplication of existing retail space and intentional market saturation.

A key issue in the debate over superstore development is whether the significant growth in retail sales by superstores has come at the expense of existing retail operations, particularly smaller local merchants. A December 1992 *Business Week* article quotes retail analysts as predicting that retailers who now account for more than half of all retail merchandise sales will disappear by the year 2000 through bankruptcies, mergers or reorganizations. Their survivors, in most instances, are predicted to be retail superstores. A number of recent studies of individual communities in which superstores have located suggest that sales generated by superstores have come largely at the expense of existing retailers and that, even where communities benefit from overall growth in retail sales, surrounding areas suffer substantial sales losses.

The consequences of new superstore development on existing retail businesses is more than an academic interest to me. Last year Wal-Mart indicated its intention to ring the Buffalo metropolitan area with new stores. What the *Buffalo News* has described as "the retailing noose Wal-Mart is drawing around Buffalo" has grown to eleven open or publicly announced Wal-Mart stores in towns from Niagara Falls in the North to Jamestown to the Southwest. Wal-Mart is also planning potentially equal numbers of Sam's Club warehouse stores in the area. In May, Minneapolis-based Target also announced plans to expand into Buffalo with a number of new superstores. This development is coming into a market in which Kmart, Ames and other large discount merchandise chains have been operating stores for many years.

The purpose of today's hearing is to analyze the growth and operation of retail superstores, and to highlight key questions of concern to small business owners and local communities. Have discount superstores contributed to the failure of significant numbers of competing small retail businesses? Do they undermine the economic vitality of downtown business areas and divert retail business to locations outside of towns? Do superstores engage in unfair pricing and advertising practices? Do superstore labor practices create competitive disadvantages for local retail merchants? Do superstores generate increased local employment or merely replace existing business ownership and employment opportunities? Do superstore policies that create direct links with manufacturers unfairly restrict the business of small product distributors, agents and dealers?

Today's hearing provides an initial inquiry into these and other questions relating to the phenomenal growth of retail superstores and the consequences of this growth for small businesses and local communities. The Committee has sought the testimony of witnesses and organizations that will highlight major issues in the superstore debate and raise questions for possible inquiry in future Committee hearings. Our witness panel represents a variety of perspectives on the superstore issue, including representatives of the National Trust for Historic Preservation, the International Mass Retail Association, the AFL-CIO, the National Association of Retail Druggists, the Manufacturers Agents National Association and a independent expert in community economic development issues.

STATEMENT OF
REP. JAN MEYERS (R-KS)
RANKING REPUBLICAN MEMBER
COMMITTEE ON SMALL BUSINESS

AUGUST 10, 1994

"IMPACT OF DISCOUNT SUPERSTORES ON SMALL BUSINESS"

Thank you Mr. Chairman. I look forward to today's hearing and I thank you for scheduling it.

The problems faced by small business retailers when competing with mass retailers and discount stores are well-chronicled and have a long history. Since at least the 1930's, small independent retailers have found it increasingly difficult to compete with much larger mass merchandisers. In an effort to save small retail firms from extinction, many states passed Below-Cost Pricing Statutes and/or Unfair Competition Acts. These laws differed from federal antitrust laws in that they were designed in large part to protect competitors and not necessarily the competitive process. Additionally, around this same time the federal antitrust laws were amended by the addition of a far-ranging price discrimination law -- the Robinson-Patman Act. These developments combined to give some level of protection to small retail firms in the area of price.

Since these developments back in the 1930's, American retailing has changed dramatically, particularly during the past decade. This has largely been a result of the emergence of discount superstores. The superstore phenomenon has taken many forms and appears to have had a pervasive influence over retailing, both generally and with respect to specific categories of products.

The discount marketers have been very successful at delivering quality products to consumers at low prices. This, of course, is advantageous to all of us. However, there is some concern that the discount superstores are going beyond aggressive competition and have, at times, crossed the line into unfair competition. I trust we will hear about these concerns from today's witnesses.

As I see it, competition and a competitive marketplace work best when there is a minimum of interference by outside concerns. When small businesses are unable to compete with large firms in price, they can usually make up for it on the basis of non-price factors -- convenience, location, service, delivery, friendliness, etc.

Thank you again Mr. Chairman for holding this hearing, and I look forward to the testimony of our witnesses.

STATEMENT OF MR. POSHARD OF ILLINOIS
HEARING ON DISCOUNT SUPERSTORES AND SMALL BUSINESSES
8-10-94

MR. CHAIRMAN. Thank you for holding this hearing on a subject of great interest to me and, I am sure, to any member who represents a largely rural district. The structural changes in merchandise retailing have had a variety of economic effects on rural communities.

In this country's history, rural communities have very often not only embraced change, but they have been leading forces for technological and economic innovation. Such changes usually have complex effects, both economically and socially. But in any case, for better or worse, the fundamental reality is that rural communities have become very accustomed to basic changes to their way of life and to their lifestyles.

Today we are not necessarily contemplating lifestyle changes in rural America. But we are examining a portion of the way rural communities' economies are being restructured - as always with mixed results, and as always with much of the change coming from forces outside the communities.

I look forward to the testimony regarding both the practices of discount

superstores in smaller communities - at whether those practices are fair or unfair, for example - and at the economic effects those superstores are having on small communities. I can see many of those effects myself in my own district, but I will be interested to hear the comments of those who have studied the situation.

STATEMENT OF CONGRESSMAN JIM RAMSTAD
BEFORE THE HOUSE SMALL BUSINESS COMMITTEE
The Impact of "Superstores" on Small Businesses

August 10, 1994

Mr. Chairman, thank you for calling this hearing today to examine the impact of so-called "superstores" on small businesses.

I am glad to have the opportunity to address this issue and trust the committee's treatment of it will be fair and even-handed.

The area around my district in Minnesota contains the headquarters for both Best Buy and Target stores -- two of the most successful franchise retailers.

The numerous jobs and economic growth these companies -- and others like them -- have brought to my district and to numerous communities throughout the nation have recently been imperiled by irresponsible political demagoguery.

In looking at the witness list, I certainly hope this hearing will be balanced -- and will not perpetuate a biased vendetta against franchises.

The impact of these stores on local small businesses is certainly a concern. But using this important committee as a bully pulpit to beat up on mass retailers would be irresponsible and a waste of time and resources for this panel.

Again, thanks for calling this hearing, Mr. Chairman. I look forward to talking with our distinguished panelists.

FRIDAY EVENING, AUGUST 5, 1994 ESTABLISHED 1873 121 Year - No. 42

Wal-Mart picks Raymond

Reports: Retailer plans giant distribution center, will employ up to 600

FROM STAFF AND WIRE REPORTS

RAYMOND – In a move that could create more than 600 jobs, Wal-Mart has taken steps toward building a giant distribution center along Route 101 here.

Jim Rivers, a spokesman for Gov. Steve Merrill, said the governor has been trying to convince Wal-Mart to locate its distribution center in New Hampshire since he was elected in 1992. Three other New England states had been vying for it.

Rivers said Wal-Mart officials indicated "the strong New Hampshire work force and the fact that they won't have to pay an inventory or machinery tax in New Hampshire," as well as Merrill's and the state's cooperation, enhanced the state's chances.

"The governor has done all he can," Rivers told Foster's Daily Democrat this morning. "Right now we – and the rest of New Hampshire – are just keeping our fingers crossed."

> *"If this is true, it would definitely be an economic boost to the town, and the timing is great with all the renovations we're making downtown."*
>
> – By EDWARD VARNEY
> Raymond selectmen chairman

Ron Coker, a senior technician for Public Service of New Hampshire, said PSNH engineers had been approached by Wal-Mart about supplying power to the building.

Coker said engineers are currently working on plans for powering the massive building.

The Union Leader of Manchester reported today that construction is expected to begin on the $[illegible] facility as early as next year.

Although a Wal-Mart spokesman wouldn't confirm the decision to choose Raymond for the center, the newspaper, citing state government sources, reported that the Raymond site will be announced at a news conference Monday.

New Hampshire currently has 11 Wal-Mart stores, with four in the planning stages. There are also

☆ Wal-Mart
Please turn to Page 14

Wal-Mart Continued from Page 1

four Sam's Club outlets, which are operated by Wal-Mart, in the state.

Wal-Mart has nearly 3,000 employees in New Hampshire; 70 percent of them work full-time.

In the fiscal year that ended Jan. 31, Wal-Mart paid more than $3 million in state and local taxes in New Hampshire and purchased more than $48.1 million worth of merchandise from New Hampshire suppliers.

The distribution center is expected to handle merchandise for 22 Wal-Mart outlets in New England, but the newspaper reported it will have the capacity for twice that many stores.

David Dorfner, a manager in the Concord Wal-Mart, said he has heard rumors the distribution center was coming to the Raymond area, but hasn't received word from Wal-Mart headquarters in Arkansas.

Edward Varney, chairman of the Raymond Board of Selectmen, said if the Wal-Mart facility does locate in Raymond, it would benefit the entire region.

"The timing is great with all the renovations we're making downtown," he said. "It will benefit the whole area because there is the possibility of some good employment opportunities."

Wal-Mart has 27 other major distribution centers nationwide. It operates 2,100 Wal-Mart stores, plus 434 Sam's Club facilities and 82 Bud's Warehouse Outlets, in 49 states and Puerto Rico.

DRED Chief Says Wal-Mart Will Give Boost to Raymond

By CONN TIBBETTS
State House Bureau Chief

CONCORD — Bill Bartlett says Raymond has reason to celebrate.

Bartlett, commissioner of the state Department of Resources and Economic Development, said yesterday that the community's tax base will grow and its unemployment problems will shrink when Wal-Mart constructs its $30 million distribution center on a 200-acre site in Raymond.

"Raymond is one of the higher unemployment areas, and Wal-Mart intends to hire up to 600 people within two years after this distribution center is built," the commissioner noted.

"These are not just clerks' jobs, because this is a distribution center of over a million square feet," he added. "It will have trucks in there, people running computers and things like that.

Bartlett said details about the wage scales are not available, but the jobs are good ones. "When they talk about the Wal-Mart stores, note that 70 percent of those people are full time and receive benefits, including a pension plan from a very solid company," he said.

He said the gigantic Wal-Mart facility "will help reduce unemployment and it is going to reduce the local property taxes by more than $2 per $1,000 assessment."

Bartlett said he knows of a man who was out of work until he landed a job with a Sam's Club outlet, operated by Wal-Mart. "After management training, he's now down in Seabrook and moving up. He thinks it's a good company to work for," he said.

Bartlett dismisses those who look down on jobs with department stores and fast-food franchises and the like.

"People don't have to take those jobs if they have employment elsewhere," he said, "but this gives new job opportunities."

He said Wal-Mart is "a good, clean industry" and "should be a good corporate neighbor."

"The fact is that Wal-Mart buys from New Hampshire vendors, at retail, $46 million a year. Wal-Mart gives to charity. It has in-house training, and it tries to promote within," Bartlett said.

He said New Hampshire and Raymond were able to beat the competition for the New England distribution center "because it's an excellent location, with the infrastructure pretty much there."

"They like the tax climate in the state — no tax on machinery, no tax on goods, all to their advantage," Bartlett added.

"Wal-Mart looked in at least three states before choosing New Hampshire," he said.

He said his agency worked hard to help clinch the Wal-Mart deal, singling staff member Dave Rines out for particular praise, but he added that DRED can't take the credit.

"We don't bring the McDonalds, we don't bring the Wendy's, we don't bring the Wal-Mart stores, we don't bring Sears or anyone else. They come where their research says there is money," he said.

Bartlett said DRED was contacted about four years ago and serious discussions started with Wal-Mart at the end of Republican Gov. Judd Gregg's administration.

As governor-elect, Steve Merrill met with Wal-Mart representatives, Bartlett said, and he "followed that up after taking office."

"I can tell you that Governor Merrill worked hard and was instrumental on this," he said.

Wal-Mart, the nation's largest retailer, reportedly considered sites in the Hadley area of western Massachusetts and the Sanford and Biddeford area in southwestern Maine, in addition to other Granite State sites in the Lee and Barrington areas.

WAL-MART / NH Operations

Wal-Mart, which plans to build a $30 million distribution center on 200-plus acres in Raymond, already plays a large role in New Hampshire's economy. A few details:

OUTLETS: The corporation operates 11 Wal-Mart stores (with four in the planning stages) and four Sam's Club outlets in the state.

EMPLOYMENT: Wal-Mart employs 2,978 people in the state, 70 percent of them in full-time positions.

TAX CONTRIBUTIONS: Wal-Mart paid $3,069,762 in local and state taxes in the fiscal year that ended Jan. 31.

PURCHASES: Merchandise purchased at retail by Wal-Mart from New Hampshire vendors totaled $46,161,232 in the last fiscal year.

Raymond Cheers News Of Big Wal-Mart Plans

By NANCY MEERSMAN
Union Leader Staff

RAYMOND — In this seemingly forgotten town struggling to get on its feet, the prospect of a $30 million Wal-Mart distribution center that would create 600 jobs was what most people were talking about yesterday.

Residents said they were ecstatic when they read the news that the rumors of the past weeks about Wal-Mart's plans were based on fact.

Government sources have told The Union Leader that Wal-Mart's selection of the site will be announced at a news conference Monday at 1 p.m.

"Who could find anything negative to say about it?" said Wes Nickerson, owner of Nickerson Auto Parts. "It's good news for the whole area, not just Raymond."

Paul Jenne of Atkinson, who owns property on Main Street, said the news was truly welcome. "Most of the people in my apartments don't have jobs," he said. "There's nothing for them to do. We need some industry in this town, some kind of employment base and a place where these kids can work."

Sean Lamonteer of 57 Main St. agreed.

"It'll get a lot of people off the streets," he said, adding that many young people, and some older ones, "just hang around on the street from early morning until late at night."

"There's always jobs needed," said Lou Gebauer, who lives on Main Street with her 7-month-old son, Eric.

"Show 'em the label on your clothes," she said to the baby. "They're from Wal-Mart!"

State Sen. Jack Barnes, R-Raymond, who was in the town offices yesterday, said Wal-Mart's arrival would be fantastic news.

"As a resident of Raymond and a person doing business here, I'm ecstatic," he said. "It's terrific for the whole region — if it's real."

Stan Shea and John Tracy, co-owners of Pine Acres Campground, the site Wal-Mart has chosen, cautioned yesterday that the property they own off Route 107 near the Route 101

RAYMOND, Page 6

...nterchange has yet to formally change hands.

Wal-Mart could back out at any time, they said.

"The place has not been sold, it's just one of the places they're looking at. It's not a done deal," Tracy insisted.

Shea said Wal-Mart has promised to make a final decision by October. If it's a go, the company will make a $40,000 deposit and the closing would be in February 1995, he said.

"Even if they tell us in October, 'Yes, we want your property,' they told us they could still back out any time," said Shea. "They would forfeit a small deposit — and it is a small deposit."

Shea said Wal-Mart would buy only part of the campground and an adjacent parcel ... n another property owner. ... would not divulge the sale price, but said the $5 million and $10 million figures people have been talking about are "way off — not even close."

He said if the sale goes through, longtime summer residents would be given new sites across the Lamprey River in an area called "The Wilderness," and the new camp would be unaffected by the Wal-Mart operation.

"It won't interfere with us at all," he said.

The million-square-foot distribution center's main building will be 40 feet high and measure 1.23 miles around the perimeter. It will be designed to handle merchandise for 80 Wal-Mart outlets in New England and will have the capacity to serve twice that many in the future.

Pine Acres, with 170 acres and five beaches, is the largest campground in New England, according to Shea, and employs 65 people.

It has about 750 sites for tents and campers, he said, and about 300 of the sites are occupied by people who rent sites for the entire April-to-October season.

Shea said if the closing goes through in February, he and his partner would have 90 days to move all of their operations, which include two recreation halls, a store, a restaurant and a large office building.

They also would have to move a waterslide, a laundromat, a miniature golf site and a bandstand.

The area is a cross-country ski center in the winter.

Many summer residents return to the same Pine Acres campsite year after year and have landscaped the plots around their mobile homes, planted flowers and installed lawn ornaments and other amenities.

Many cars in the campground bear Massachusetts license plates. Numerous residents use the campground as their summer home and commute to their jobs in the Bay State.

Doris Reardon of Billerica, Mass., said she has been spending the summer at Pine Acres for seven years. Masses of flowers adorn the front of her small home.

"I love it," she said. "We're like family here."

Reardon said if and when the move becomes necessary, "everyone wants to be with the neighbors they're with now."

She said some people who have been there for 20 years will have a better chance because they'll have first pick in a lottery.

"I hate to think about it. We're going over there. In fact, we're picking out a site," she said.

On Raymond's Main Street, several buildings have recently gotten facelifts through federal and state grants. Joel E. Frankel, who is in charge of housing rehabilitation for the town, said 80 multifamily rental units have been added in the past three years.

Frankel said a Wal-Mart distribution center would have a tremendous positive impact on the town.

In June, Raymond had an unemployment rate of 6.3 percent compared with the state rate of 4.7, according to state labor market analyst Peter Bartlett. As recently as three years ago, unemployment was in the double digits.

Raymond's unemployment rate has been "consistently above the state average," Bartlett said.

INTERNATIONAL
MASS RETAIL
ASSOCIATION

›bert J. Verdisco
·resident

STATEMENT

OF THE

INTERNATIONAL MASS RETAIL ASSOCIATION

TO THE

COMMITTEE ON SMALL BUSINESS

U.S. HOUSE OF REPRESENTATIVE

ON

MASS RETAILERS, SMALL BUSINESS AND COMMUNITY GROWTH

August 10, 1994

Presented by:

Morrison Cain
Vice President,
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Mr. Chairman, members of the Committee, I am Morrison Cain, and I am Vice President, Legal and Public Affairs for the International Mass Retail Association (IMRA). I am pleased to have this opportunity to give you the perspective of the mass retailing industry on the emergence of discount "superstores," as the Committee terms them, and the many ways in which they affect small businesses and the communities they serve.

Contrary to what you may have heard or read from some interest groups, the impact is overwhelmingly favorable: greater consumer choice, employment and income growth and an improved economy. For most local businesses, large-scale retailers not only mean an expanded market and more customers, but also new outlets and supply sources.

Portrait of Mass Retailing

Let me begin by giving you a brief outline of the IMRA. It is the trade association, based in Washington, D.C., that represents and serves the nation's mass retail industry. IMRA's members include discount stores (both those that carry a full line of goods and those which specialize in one or more lines, such as sporting goods, auto parts, consumer electronics, computers, toys or other lines); warehouse clubs; home centers; off-price apparel stores; catalog showrooms; deep-discount drugstores; dollar stores; variety stores; close-out stores and other formats.

Their stores can be found in every state, and every Congressional district. Taken together, IMRA's members operate over 55,000 stores, employ well over a million Americans and account for the overwhelming majority of the nation's mass retail industry, which had an estimated $245 billion in sales last year.

IMRA's members vary greatly in size. They range from the nation's largest retailer, Wal-Mart, and other national retail chains, to medium-sized chains operating in one or more regions of the nation, to chains with fewer than 10 stores operating in one or more locality. Some of our members operate the very large stores that appear to be the Committee's primary interest. These include full-line discount stores like Wal-Mart, Target, Caldor, Bradlees, Venture and many others; warehouse clubs like Price/COSTCO, Sam's or B.J.'s; specialty discounters such as Best Buy, Circuit City, CompUSA, Sportmart and many more; and large home centers such as Home Depot, Lowe's and Hechinger's.

Not all of IMRA's members operate large stores. Some variety and dollar stores formats, to name two, may be operated by large companies, such as Woolworth, McCrory, Dollar General or Family Dollar, but stores of that type are generally smaller in size and volume. Nor are all large stores necessarily part of a large chain.

Just as store and company size varies, so too do the settings in which mass retailers operate. While free-standing stores are the most common, mass retailers can also be found in central

business districts, in neighborhood strip centers, community malls and regional malls. Mass retailers build new stores, remodel their old ones or stores that another company vacates, and in some cases take part in historic preservation projects. A company's differing operating methods and the varying needs of particular formats account for most of the variation in the type of locations and markets that they seek (for example, warehouse clubs locate in fairly densely populated areas, while a full-line discount store may be able to succeed outside primary or secondary markets).

All of IMRA retail members share some characteristics, however. Probably even more so than for retailing in general, mass retailing is highly competitive and operates on thin margins. The overall industry profit is in the neighborhood of 2% of sales. Every day, the public votes on your future; they use dollars instead of ballots, but the feedback is immediate.

Retailing has always been a volatile and highly competitive business. You need only look at the roster of the nation's largest retailers of ten or twenty years ago, and compare it with one of today. You will find some repetitions, but many names from the older list will be gone, replaced by companies that may not have been on the list or even in existence decades earlier.

The keys to continued survival and success are delivering value and satisfying customers. This means they must maximize operating efficiencies in order to offer competitive low prices. Since mass retailers are more efficient, they can offer lower mark-ups on goods, as long as they can attract and efficiently process sufficient volume of sales at those lower prices.

That in turn means they must have desired items in stock, must match their hours of operation and types of service to customers' preferences, and must be able to allow customers to find what they're looking for, at a price they want to pay, and get the product out of the store as quickly and hassle-free as possible.

To help them achieve those goals, mass retailers early on adopted and then refined upon the technological advances in distribution and logistics (such as check-out scanning, sophisticated inventory processing systems, direct store-to warehouse and even store-to vendor communications (known as electronic data interchange, or EDI), just-in-time delivery, and many others, that have made them the most efficient, lowest-cost operators.

These operating efficiencies can spell the difference between success or failure in this fast-moving business. The sheer volume of merchandise they sell also leads mass retailers to put great and growing emphasis on greater consultation and communication with their suppliers, not just in traditional areas such as price and availability, but also in a broader range of concerns, including product design or customization, joint promotional efforts and many others. Not surprisingly, the most prominent recent buzzword in mass retailing for relations with suppliers is "partnership."

As much as their effective use of technology, mass retailers owe their success to the skills and commitment of their employees. Like most retailers, mass retailing is labor-intensive. In fact, manpower is mass retailing's second greatest expense, second only to acquiring merchandise. Mass retailers not only offer a competitive wage and opportunities for full-time and part-time

employment, but also frequently provide employee discounts, profit-sharing, stock purchase plans and other benefits and performance incentives.

A *New York Times* article entitled "'Good' Jobs In Hard Times" last October noted the important but often overlooked role that mass retailers play in job creation; the three discount store employees profiled in the article included a manager who came to the retail company after the trucking company he worked for went bankrupt, an ex-I.B.M. worker who accepted a buy-out to avoid an impending lay-off and a former convenience store manager who switched to the discounter in order to get greater employee benefits. The article is reprinted in Appendix A.

Mass retail companies stand out for their lean and flexible management structures, a high degree of decentralization and responsibility given to store managers and associates and a strong work ethic. It is no coincidence that mass retailers are often atop polls that ask the public or business executives which retail companies they most admire.

Small Business: Competitors, Suppliers and Customers

Just like large retail business, some small retail businesses will adapt and prosper over time, and others will not. All retailers will be affected by changes in an area's population, economy and employment trends, transportation, housing and -- above all, customer choices and preferences. Just as certainly, some firms, of whatever size, will deliver greater value than others. That value may be in the form of low prices, but could also come from product selection, knowledgeable sales staff, convenient hours, a nearby location, superior store service, customer-friendly store policies or in many other ways.

There is ample evidence, however, that a small business need not fail in the face of competition from large discount stores. In fact, the presence of a large discount store usually acts as a magnet, keeping local shoppers from going to other towns to shop, and perhaps expanding the market by drawing shoppers from outside the traditional area. Many academic observers have noted that when a large-scale retail store opens, nearby businesses that do not directly compete with the large store experience greater traffic and business. Academic studies also clearly show that small towns with a large-scale discount store enjoy higher growth rates than towns without one.

Even small businesses that are in the same line as large-scale stores can continue if they adapt to the changed retail environment. The emergence of discounting as the dominant form of general merchandise retailing has not eliminated older, less price-competitive types of retailing, such as variety stores or department stores.

Smaller retail competitors can survive and even thrive in a market with larger competitors by finding a market niche (for example, a small general merchandise store may emphasize crafts, hobbies or other lines that the full-line store does not carry in depth), by expanding service and quality, and by becoming more efficient in their operations.

The Congressional Research Service this January issued a report for Congress on "The Discount Retail Industry and Its Effect on Small Towns and Rural Communities." It noted that the business analysts who have most studied the subject advise small retailers in communities facing the entry of a large discount store to make adjustments in order to co-exist with the larger competitor. These advisers start with the observation that a large discount store may increase the retail trade area, and even a large store cannot sell all products and provide all services to all customers.

Among the adjustments they advise small business to make are:

- finding a niche that does not compete directly, by moving to different brands or sizes, or carrying items of a different type or quality than those available in the discount competitor.
- selling items compatible with those sold at the discount store, or selling items in quantities (e.g., bulk or singles) not carried by the discounter
- re-focusing on "upscale" merchandise
- improving store marketing and image by more convenient hours and better return policies
- pricing competitively, but not relying on price as the main draw
- emphasizing services that the discount store may not offer, whether product advice, delivery, special orders, repair, gift wrapping or others

Even large retailers have found steps like these useful in competing with large-scale discounters.

Of course, while some small businesses compete with large-scale discounters for the shopper's dollar, many other small businesses know mass retailers as their own customers, or rely on mass retailers to provide products that they use in their own businesses. Any small business that makes a product that mass retailers decide to carry is not likely to remain small for very long. Mass retailers frequently purchase some items locally, and their greater volume clearly benefits those suppliers.

The supplier relationship runs two ways. Just as they sell to mass retailers, small businesses also buy from them. The best examples may be warehouse clubs (which offer affordable, dependable merchandise and supplies to literally millions of their small business members), large-scale home centers (which do substantial trade business with contractors and others in construction or home improvement businesses) or computer or office product superstores. For the small restaurant that buys kitchen supplies, the office that purchases computer equipment or furniture, or the corner grocery that stocks up on soft drinks or canned goods, mass retailers are a valued supply source -- and an alternative that may not have existed very long ago.

Serving Rural Communities

Mass retailers understandably can be expected to locate in areas experiencing population growth, and many have concentrated on suburban locations. That does not mean, however, that mass retailing has no place in rural areas or central cities, or that those areas cannot benefit from the presence of mass retail stores.

A 1991 study by researchers from the University of Missouri's College of Business and Public Administration looked at the experience of 1,885 rural counties in 26 states over a 20-year period (1969-1987). Using income and employment data covering 18 broad measures of economic activity, the study compared the economic development of 678 counties which had Wal-Mart stores with 1,207 counties that did not. It found that, throughout the two decades examined, rural counties with a Wal-Mart had higher rates of growth than other counties in all 18 economic indicators. The researchers also found that the longer a Wal-Mart had been opened in a county, the stronger the impact that had on the county's economic indicators.

Specifically, payrolls and personal income (both in real terms) grew faster in counties where the discounter operated than in either the other counties or the state overall. The researcher found that rural areas with the discounter did better on nearly every economic indicator than did other counties.

The study also found that the presence of a Wal-Mart store did not appear to have a statistically significant relation to changes in retail earnings for the food, automotive, apparel and miscellaneous retail segments, which correlated strongly to changes in real personal income and growth in county population. Appendix B to this testimony gives the executive summary of the research paper, and a table listing the comparison of the 18 economic indicators.

The trade publication *Discount Merchandiser* in 1989 undertook its own examination of the impact of a large-scale discounter, in this case Wal-Mart, on local communities. The monthly publication surveyed chambers of commerce in 30 small communities where Wal-Mart stores operated.

Contrary to the claims of some merchants and some superficial accounts in the general press, which appeared to lay the failure of any small retailer or the stagnation of any downtown shopping area at the feet of discount competition, the survey found nearly universal agreement in the local business community that the discounter's presence was in fact a catalyst for improving and diversifying local businesses. The local business groups were also in agreement that the discounter's presence had attracted more shoppers into the town. The article appears as Appendix C.

To put these findings in more down-to-earth terms, consider the article in the October 1992 *Smithsonian* magazine, later abridged in the *Reader's Digest* under the title "The Little Town That Saved Itself" (found at Appendix D). The article examined the case of Viroqua, Wisconsin, a farming town with a population of just under 4,000. The railroad had left, creameries and cheese

factories had closed, the town's children moved away as soon as they finished their education, and the downtown business district was in severe decline.

The opening of a Wal-Mart store there, far from being the death knell of downtown merchants, acted instead as a wake-up call. With help from the Historic Preservation Trust's "Main Street Project," citizens organized to revitalize the downtown, and merchants edited their lines, expanded their hours and refurbished their stores. The end result was not only that the Main Street merchants -- the small hardware store, the general store and others -- survived, but the community also mobilized for a variety of other civic and development projects.

This story reinforces the view of the local chambers of commerce surveyed by *Discount Merchandiser* that a large-scale discounter can serve as a catalyst for the economic growth of a small town. It also illustrates the truth of the old retail saying that competition makes good competitors better.

Serving Urban Communities

While some mass retailers have long had urban stores, many who have not have begun to discover the opportunities there. Mass retailers like Bradlees, Channel, Staples and Toys 'R Us have recently entered Manhattan (often in sites vacated by department or specialty stores), while Caldor has moved into a site in Flushing. Similar developments can be found in other urban areas.

In addition, city planners have begun to realize that larger mass retail stores can help revitalize central cities. The May 22 *New York Times*, for instance, contained an article titled "Industry Land May Be Site For Retailing; Giuliani Officials Plan For Superstores In Industrial Areas," that recounted efforts to attract specialty retailers and warehouse clubs to help redevelop thousands of abandoned or under-used industrial sites. The article can be found at Appendix E.

Shrinking manufacturing and the decline of many of New York's conventional department stores has depressed employment and the city's tax base, so city planners are recognizing that they should remove some of the obstacles to large mass retailers locating in the city. Doing so not only makes sense on its own, since it would bring needed jobs and economic growth to hard-pressed areas, but it also makes sense to prevent further erosion in those areas.

If New York City keeps out these popular retailers, city economic development officials believe, those stores will end up locating nearby and pulling customers from the city. "We've got to open our eyes to what is happening all around us," the article quotes the head of the City Economic Development Corporation, an arm of the city government. "People worry about the decimation of neighborhood retail. It's being decimated already. If we won't have large-scale retailers, they will be decimated to the benefit of New Jersey, Nassau County and Connecticut."

The same article quoted a spokesperson for the Queens borough president as recognizing the concerns of mom-and-pop stores over an influx of new competition, but stating that "We think they can continue to operate with minimal impact from the large retailers by being more flexible

and service-oriented." That is essentially the same prescription given by academic researchers who have looked at rural communities. Dr. Kenneth Stone of Iowa State University, for instance, tells small retailers that they can co-exist with a large-scale discounter but advises that they may have to change operational methods. He also notes that entry of a large-scale discounter generally expands a town's trading area.

Although it dealt with supermarkets, rather than superstores, similar conclusions were reached in an August 1992 report by the Community Food Resource Center, a non-profit nutrition and food advocacy group in New York City. The report found that the presence of new supermarkets has not threatened the viability of well-run small food stores, despite the fears and protests of some small merchants. Some urban planners oppose the inclusion of large supermarkets in an urban environment, the report notes, and some merchants argue consumers lack enough money to support new stores. "While everyone debates the issue," the report caustically notes, "food money and jobs are leaving the City."

The Community Food Resource Center calls much of the resistance to new supermarkets "simply resistance to changing market conditions and increased competition" and quotes Mitchell Moss, an urban affairs specialist at New York University. He calls the arguments "the height of protectionism" and further observes: "People are getting in their cars and driving to the suburbs because they can't find what they want in the city stores. We have an obsolete and anti-retail zoning system that hurts the boroughs outside of Manhattan... It's bad for New York. It hurts sales-tax revenue and depresses employment."

Other Contributions to Communities

Mass retailers contribute to their communities in many ways. First, the values that they offer their customers effectively lower the cost of living for local residents. In addition, large-scale discount stores provide employment opportunities, starting with the construction or remodeling of the store and continuing with the hiring of local residents for various full-time and part-time positions at various skill levels. One clear example can be seen in that one large discount retailer, Wal-Mart, has created more jobs than any other American business in each of the past two years.

Further, large-scale retailers help attract new shoppers for neighboring stores and keep local residents from traveling to other communities to make their purchases. The Congressional Research Service study referred to above noted that every study on the impact of discount retailers on rural communities found that they increased local sales-tax revenues.

Mass retailers also participate in the community by assisting civic and charitable activities, and through grants, scholarships, matching programs and donations of merchandise and employee time and involvement. They enter partnerships with schools, participate in educational and social program projects, and take part in local recreation, youth, literacy and other worthwhile programs. In addition, during natural disasters, numerous mass retailers have provided extensive low-cost or free assistance to the affected communities. Some mass retailers also have industrial

development programs in which they work with other local businesses and organizations to attract new business to their communities.

Conclusion

While all businesses -- and perhaps retailers especially -- face the challenge of keeping up with economic and business developments and consumer preferences, it is clearly possible for small retailers to co-exist with large-scale discount stores. The available evidence also demonstrates that a community, whether rural or urban, can benefit from the presence of mass retailers, and is likely to lag economically if they are not present.

Appendices:

A] *New York Times*, October 3, 1993, "'Good' Jobs In Hard Times"

B] Excerpts from "The Economic Impact of Wal-Mart Stores on Host Rural Counties," Business and Public Administration Research Center, University of Missouri, Drs. Lori Franz and Edward Robb, 1991. Title page, table of contents, executive summary, research design and data sources and Table 3 (Percent Increase in Economic Indicators)

C] *Discount Merchandiser*, November 1989, "Wal-Mart: A Retailing Catalyst"

D] *Reader's Digest*, April 1993, "The Little Town That Saved Itself"

E] *New York Times*, May 22, 1994, "Industry Land May Be Site For Retailing"

Attachment A

The New York Times

Sunday, October 3, 1993

Business

'Good' Jobs in Hard Times

$5.25 an hour

$7 to $8 an hour

$7 to $8 an hour

Working at Wal-Mart: From left, Carolyn Dagit (Bentonville, Ark.), Richard Moyer (Fayetteville, Ark.), Mary Meyers (Fishkill, N.Y.).

For many, Wal-Mart and other low-paying discount chains offer the best deal around.

By LOUIS UCHITELLE

ALMOST unnoticed, discount retailers like Wal-Mart, Kmart, Target, Venture and Home Depot are becoming a huge source of new employment in America. The jobs they offer, mostly at $5 to $9 an hour, would have been unappealing in another era. But in these hard times, the low hourly pay — sweetened with health insurance and profit sharing — is turning out to be one of the best deals that corporate America is offering to the mass of Americans looking for "good" jobs.

Leading this process is Wal-Mart, the nation's second-biggest private employer, after General Motors. In the 30 months since the recession ended, no other company has added so many jobs to the national work force as has Wal-Mart: 153,000 of them, a significant contribution to the net increase of 1.9 million jobs created in the United States during the recovery. The other 165 or so discount retail chains together accounted for an additional 186,000 jobs, according to Chain Store Guide, a trade publication, which gathers such data. The Labor Department does not track employment at discount stores.

As the discounters expand, opening hundreds of barn-like stores to meet the demand for low-priced merchandise from Americans pinched by stagnant incomes, many other industries shrink and lay off workers — including traditional higher-priced retailers hurt in the competition with Wal-Mart and the others. That gives the discounters a huge pool of idle people from which to choose. The stores report that 5 to 10 people, many of them experienced and skilled, compete for each job. Home Depot, for example, hires carpenters, plumbers and electricians as sales people for its home improvement centers.

The proliferation of discount store employees is a far cry from the Clinton Administration's vision of highly paid technicians proliferating in high-tech industries. But Robert Hall, a Stanford University economist, hails the expansion of the discounters as "a tremendously important development because it is providing jobs to the high-school educated who in the past worked in factories and trades."

On the Retail Floor

Visits to various Wal-Mart stores turned up workers who fit Professor Hall's description, and then some. There is Richard Meyer, who once studied architecture and now manages the gardening department at a Wal-Mart in Fayetteville, Ark. There is Mary Meyers, who lost her job as an I.B.M. technician and now sells accessories and lingerie at Wal-Mart's month-old outlet in Fishkill, N.Y. And there is Carolyn Dagit, who once ran a convenience store and is now a customer service manager at the store in Bentonville, Ark., where Wal-Mart has its headquarters. She switched for Wal-Mart's better benefits package. All earn less than $8 an hour.

While Labor Secretary Robert B. Reich is the Administration's point man in the campaign for more high-tech, high-wage industries, he nevertheless blesses the discount store employment trend. "The best retail sales jobs are not like the old sales jobs at all," he said, "and we should not be prejudiced against retail jobs because of big pictures in our heads of workers doing drone work. The proper distinction is not between manufacturing and retail, but between jobs that demand skills and expertise and those that don't."

The discounters are not the only vigorous job creators. Some other industries, among them restaurants, health care and temporary employment, have generated even more jobs than the discounters. These jobs also are low paying, but most lack the standard benefits package that has emerged among the discounters.

The discounters, in effect, are becoming the "factories" of the 90's, from an employment viewpoint. They are providing a new version of the full-time jobs with benefits that millions of blue-collar Americans found in manufacturing in former decades — although this emerging "safe harbor" offers just a shadow of the wages, benefits and security that were

Do Chains Cost Jobs?

THE discount retailers are expanding by hundreds of stores a year. That is a fact.

But Americans have not spent more in recent years to purchase all the merchandise that the nation's retailers — discounters and traditional stores alike — offer. That is also a fact.

So, if the discounters are adding huge quantities to the national pile of merchandise, and selling it, then the traditional merchandisers must be losing sales, and even going out of business — particularly stores on downtown squares in hundreds of rural towns.

That conclusion may be logical, but it does not get by as uncontested fact. "If someone wants to compete against us on Crest toothpaste, we'll win," said Don Soderquist, Wal-Mart's vice chairman, "but if they offer a better quality of fabric than we do, or name-brand clothing that we don't have, then they can merchandise around us, and they do."

Many local retailers disagree. They argue that no matter how clever they are, they cannot compete against the discounters' efficient, low-priced operations, or their huge selection of goods.

Kenneth Stone, an Iowa State University economist who has studied the Wal-Mart phenomenon, supports this contention.

"The damage is done three or four years down the road," he said. "Wal-Mart increased the jobs initially in Iowa, but out of 43 Wal-Marts in the state, one-fourth of the towns near them now have smaller commercial areas.

"What happens is that Wal-Mart has a saturation strategy," he added. "They come in with stores 60 miles apart and then they are 10 to 12 miles apart. About three years after a Wal-Mart opens, stores near it begin to close."

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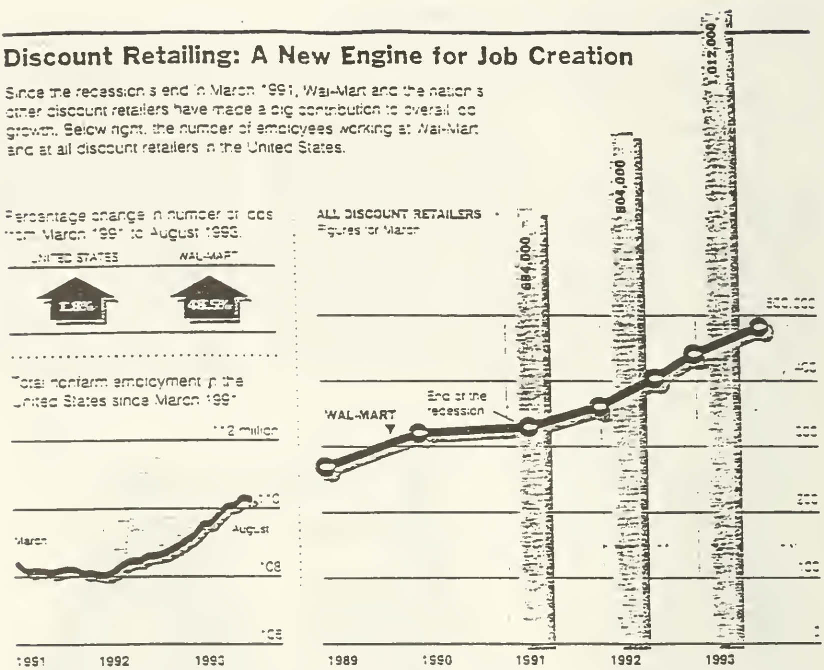
Discount Retailing: A New Engine for Job Creation

Since the recession's end in March 1991, Wal-Mart and the nation's other discount retailers have made a big contribution to overall job growth. Below right, the number of employees working at Wal-Mart and at all discount retailers in the United States.



Sources: Wal-Mart, Chain Store Guide, Bureau of Labor Statistics

The New York Times

commonplace in manufacturing.

Full-time in discount retailing means 28 to 30 hours a week, not the minimum of 35 to 40 hours that is standard in manufacturing. The shorter week is used, in part, to give flexibility to raise a worker's hours in busy periods without paying overtime rates, which kick in at 40 hours.

While manufacturers, prodded by unions, pay all or most of the premiums for company-sponsored health insurance, workers at discount retailers, where unions are rare, pay a bigger share, typically 30 percent. That can be $80 a month for a family policy, a considerable sum for a person earning $6 or $7 an hour. Some don't take the insurance. At Wal-Mart, where 335,000 of the company's 490,000 employees are full-timers and thus eligible for health insurance, just 250,000 take it.

In moving toward higher employment levels, the discounters are adopting labor practices that run counter to trends elsewhere in corporate America. While many companies have hired more part-timers, discounters have concluded that sales clerks and cashiers are more enthusiastic about customers if they are full-timers. So full-time employment, as the discounters define it, has risen to between 60 percent and 70 percent of all employees at companies like Wal-Mart, Kmart and Target, from 50 percent five years ago. But should sales weaken, hours can be adjusted downward so an employee could become a part-time, losing health insurance and pay. (Wal-Mart acknowledged that this can happen, but a spokeswoman said the company responds to sales downturns by cutting part-timers' hours, not full-timers'.)

Adding People

The discounters are also running counter to corporate America in layoffs. Instead of getting more sales from fewer workers — the norm in manufacturing — sales and employment rise in tandem at many discounters, on the theory that one requires the other. In the discount store culture there must be enough sales people, for example, to be within call of a customer needing help.

Neat shelves also boost sales, Wal-Mart contends. That means enough sales clerks to constantly straighten merchandise in stores that cover 90,000 square feet or more and display 50,000 different items.

Late one recent afternoon, Michael Campbell, manager of Wal-Mart's Bentonville store, took a visitor through the food produce department, where after a day of shopping shiny apples were still arranged in unbroken pyramids, and watermelons, sliced open, were displayed in geometric patterns on tilted beds of ice, their juicy red innards drawing customers. "We have five people in produce through most of the day to make it look as if the store just opened," Mr. Campbell said.

And if more than three people are lined up at checkout counters, another line must be opened to reduce the waiting time, or sales will drop, Wal-Mart executives say.

The Wal-Mart store in the Regency Shopping Center near St. Louis shows the results of these strategies. The staff has grown to 225 from 180 two years ago, with no increase in floor space.

But if the discounters are engaged in rapid hiring, they certainly are not engaged in raising wage levels. The very success of discount retailing in an era of straitened circumstances depends on translating some profits into lower prices rather than higher wages — a process Professor Hall describes as "raising the real incomes of Americans by delivering goods to them at lower prices."

Raises for workers come, instead, through profit sharing. Full-timers are eligible, as are part-timers, at most discounters if they work at least 20 hours a week. Typically, the profit sharing is an annual award of company stock equal to 6 percent of a worker's pay. But between job turnover and low pay, just 7,015 of Wal-Mart's

employees [illegible] accumulated [illegible] or more worth of stock.

"That is not a lot of employees," said Charles Ratcliff, vice president of benefits. "One reason is that when people accumulate enough stock they often leave and use the money to start a business."

The workers — more than a dozen were interviewed in visits to Wal-Mart stores — express resignation at their circumstances. They also express hope that Wal-Mart's expansion will bring them promotions, more money, and gratitude for the Wal-Mart culture of customer service. Since the latter requires worker initiative, Wal-Mart pays attention to employee morale, trying to squeeze smiles and loyalty from workers whose incomes have deteriorated.

"A lot of our people came to us from jobs that paid more; that is true," said Donald G. Soderquist, Wal-Mart's vice chairman. "But we say to a department head, for example, 'You are running a store within a store.' That is important and it makes people feel better."

Big Cut in Pay

Certainly, customer service is a lot easier to generate at Wal-Mart's Fiesta Plaza store in Fayetteville, with people like Mr. Moyer, 53, the garden department manager. Most of his career had been spent at a trucking company, where he calculated complicated cargo rates. But the company went bankrupt in 1987, and with three children still in school, Mr. Moyer joined Wal-Mart, first as a freight handler, at less than half his old pay of $12 an hour. In time, he moved up to gardening manager, earning today $7 to $8 an hour (he won't be more specific).

"I can do a lot of purchasing on my own, as long as I can sell what I buy," Mr. Moyer said, noting with pride that over the last month he has purchased 1,200 chrysanthemum plants, quickly reselling all of them. But while he speaks well of Wal-Mart, Mr. Moyer, who dropped out of college after two years, stops short of saying he is happy with his lot.

"Sometimes there are no jobs, and then when the opportunity comes to be with a solid company, you better take it," he said.

Ms. Meyers, the former I.B.M. employee who joined Wal-Mart in Fishkill in July, takes a more ambitious tack. She says she is determined to rise in the company, even if that means relocating to one of the newly opened Wal-Mart stores. Having slowly worked her way up at I.B.M. during 21 years there, she found herself forced out. So Ms. Meyers, who is in her early 40's, joined Wal-Mart's store in Fishkill, 50 miles north of Manhattan and the first in the New York area. There she earns $7 to $8 an hour. She, too, resists being more specific about her pay, but acknowledges that it is less than half her I.B.M. wage.

From being a technician at I.B.M. learning to be a computer programmer, she took a buyout ("It was only a matter of time before the job disappeared," she said) and went to Wal-Mart as manager of accessories and lingerie — joining 30 other former I.B.M. employees who now help to staff the Fishkill store.

"I believe you have to crawl before you walk, and I don't mind if I have to go down a little and then work my way up again," Ms. Meyers said. "I saw that I could do that at I.B.M., and now I want to do it here."

But what if Wal-Mart, like I.B.M., pushes her out before she gets to the next steps up, which are assistant store manager, at $23,000 to $25,000 a year, and store manager, at up to $60,000 a year in base salary.

"I never, never thought that I.B.M. would lay me off, and it took 21 years for that to happen," Ms. Meyers said. "Now I want to work somewhere for at least a good five years, and I think that is possible at Wal-Mart."

Looking for Benefits

The big draw for Ms. Dagit, who became an employee 18 months ago, was Wal-Mart's benefits, which are similar to those at other discount retailers. She is now a customer service manager in the Bentonville store. Ms. Dagit, who is 32, had managed an E-Z Mart convenience store, earning $5.50 an hour plus health insurance, but none of the other benefits that Wal-Mart offers, among them profit sharing, dental care up to $1,000 a year, life insurance and paid vacations (a week after one year, two weeks after two years, three weeks after seven years).

With these benefits as a lure — and the prospect of more weekends off — Ms. Dagit took a cut in pay and joined Wal-Mart as a cashier at $4.50 an hour. Now she is up to $5.25, and is hoping to rise to $6 as a supervisor of customer service managers.

But very few hourly workers get beyond $7 an hour in Arkansas and other rural areas, or beyond $9 an hour in metropolitan areas. Robert Schleicher, manager of the Fishkill store, says he has only one employee beyond that range, a woman hired away from another discounter to run the ladies' wear operation, at $10.25 an hour. And Mr. Campbell, the Bentonville store manager, mentions pharmacists and skilled butchers as people who can get even $15 an hour.

Karen Singer, 44, a sales clerk in the fabrics department at the Wal-Mart store at the Regency Shopping Center near St. Louis, is not near that level of pay, despite her skills as a lace-maker. Having worked very little while she raised two sons, she joined Wal-Mart in July, at $5 an hour, out of concern that her husband might lose his $16-an-hour factory job at McDonnell Douglas.

"A lot of my husband's friends have been laid off and they tell him there is nothing out there, no jobs," Ms. Singer said. "But the company now says that they won't close his factory, so I am buying a car with my salary rather than put it in savings."

The Going Rate

That salary will go to $5.50 an hour soon, mainly because the company has decided that $5 is not enough to hold new employees like Ms. Singer at a store that is just a few miles from downtown St. Louis. The minimum starting pay at Fishkill is $6 an hour, under the Wal-Mart policy of paying just above the going rate in any market for competent people.

"We hire no one at the minimum wage; we base our pay on the marketplace," said Mr. Soderquist, the vice chairman. "If Kmart is paying $5 an hour, we'll pay $5.25 or $5.50; and if the competitors are paying $4.50, we'll pay $5." The minimum wage is $4.25.

Similarly, Kmart and other discounters claim to be paying above Wal-Mart. But only Home Depot's pay scale is significantly higher, with wages of $10 an hour or more to attract carpenters and plumbers — an outlay that is offset by offering slightly less in benefits.

"People doing the same sort of work in France, Belgium or Germany get much higher wages than Americans," said Richard Freeman, a Harvard labor economist. "In France, no one earns less than 50 percent of the average manufacturing wage, but here it is 40 percent."

For Mr. Freeman, the lack of union representation helps to explain the disparity. But American union leaders say discount retailers like Wal-Mart, with nearly 2,000 stores, are hard to organize store by store. In fact, the discounters have hurt the unions, having forced out of business some higher-priced retailers with union workers.

So the unions take an indirect approach, trying to stir public opinion against the discounters by accusing them of such things as buying too much merchandise abroad.

As for organizing workers, "we think it is better to wait until the climate is right and the workers come to us," said Charles Mercer, an executive of the United Food and Commercial Workers Union. The right time will come, he said, when the discounters' rapid growth slows, workers find their hours cut back and profit sharing is hurt by falling stock prices, which happened to Wal-Mart's stock this year.

"One reason the workers have not come to us is the profit-sharing," Mr. Mercer said. "It has worked; you cannot deny that." ∎

Attachment B

THE ECONOMIC IMPACT OF WAL-MART STORES ON HOST RURAL COUNTIES: A SURVEY OF RURAL WAL-MART AND NON WAL-MART COUNTIES IN WAL-MART HOST STATES

B&PA RESEARCH CENTER

and

COLLEGE OF BUSINESS AND PUBLIC ADMINISTRATION

UNIVERSITY OF MISSOURI

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Prepared By

LORI FRANZ

EDWARD ROBB

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THE ECONOMIC IMPACT OF WAL-MART STORES ON HOST RURAL COUNTIES: A SURVEY OF RURAL WAL-MART AND NON WAL-MART COUNTIES IN WAL-MART HOST STATES

EXECUTIVE SUMMARY

This study presents an analysis of economic data and statistics for all rural counties in the 26 states in which the Wal-Mart Corporation operated a retail outlet during the period 1969 to 1987. The counties are subdivided into urban (SMSA) counties and rural counties (non SMSAs). The economic development of the 678 rural counties hosting a Wal-Mart store was compared to the 1,207 non Wal-Mart rural counties. Comparisons with both rural and statewide economic trends were also made.

The data for the study consisted of income and employment information covering 18 broad measures of economic activity. The data was extracted from publicly available databases maintained by the U.S. Department of the Commerce, Bureau of Economic Analysis and the U.S. Department of Labor, Bureau of Labor Statistics.

Three levels of analysis were conducted. The first consisted of a comparison of the level and rates of change in the 18 economic indicators before and after the opening of a Wal-Mart store in rural counties.

The second level of analysis was similar to the first, except that the indicators were indexed to reflect relative changes compared to statewide indices, SMSA indices and the indices for non Wal-Mart counties. The advantage of this approach is that it accounted for the prevailing economic climate within each region.

The final section of the study presents a regression analysis which compared counties with a Wal-Mart store and those without one.

The major findings of the study are as follows:

I. Rural areas were outpaced in economic growth by their urban neighbors. Urban SMSA counties demonstrated stronger growth patterns than rural counties on almost all economic variables considered in the study.

- Population increased an average of 1.4% per year for the states as a whole, but only 1.0% in rural areas.

- Total income increased an average of 3.8% per year for the states as a whole, but only 3.4% in rural areas.

- Retail employment increased an average of 3.6% per year for the states as a whole, but only 2.3% in rural areas.

II. Average rates of change in real earnings in retail trade were stronger in every retail category for urban counties.

- Real earnings in retail trade grew faster in urban than rural areas. The average annual average rate of change was 1.9% when all counties in the states were considered, as compared with a 0.5% change when only rural counties were considered.

- Rural areas as a whole experienced declining average annual earnings in retail trade in the sectors of building materials, automotive, and apparel. These declines were not evident when the states, including urban areas, were considered as a whole.

III. Rural economies in some regions of the country have experienced greater economic hardship than rural economies in other regions of the country.

- In the Plains states (Nebraska, Kansas, Minnesota, Iowa, and Missouri) and Great Lakes states (Illinois, Indiana, Ohio and Wisconsin), real earnings in retail trade at the state level increased an average of 0.3 and 0.1 percent per year respectively, as compared to 1.9 percent average for all states considered.

- With the exception of the categories of food and eating/drinking, all categories of retail trade earnings declined in rural areas in the Plains and Great Lakes states over the period of the study.

IV. Rural counties with Wal-Mart stores have a significantly higher growth rate on all 18 economic indicators in the study than non Wal-Mart rural counties.

- Average retail trade earnings in building materials, general merchandise, automotive and apparel were declining at a faster rate in non Wal-Mart counties.

- Although population increased in only 67% of the Wal-Mart rural counties after the opening of a Wal-Mart store, real personal income increased in 84% of the Wal-Mart counties after opening, employment in retail trade increased in 76% of the counties, and non-farm self employment increased in 99% of the Wal-Mart counties.

- Changes in retail trade earnings in food, automotive, apparel, and miscellaneous retail were significantly related to changes in real personal income and county population, but not the presence or absence of a Wal-Mart store in the county.

V. The longer a Wal-Mart existed in a county, the more positive the impact on economic indicators. Counties with Wal-Mart stores which have been open for longer periods tend to compare very favorably on growth rates when state and non Wal-Mart rural areas are examined.

INTRODUCTION

Rural areas across America have faced serious economic problems during the last two decades. Small towns and rural communities have been severely hit by declining farm incomes, population shifts and losses in employment opportunity. Many communities have observed a decreasing availability of goods and services in their market area. Some rural citizens have developed a preference for visiting urban areas for at least part of their consumer needs. At the same time, the Wal-Mart corporation has chosen to invest heavily in rural areas, opening large discount department stores in small and sometimes shrinking communities across the nation.

The entry of the large mass merchandiser into rural market areas engenders a variety of reactions in the affected community. Some observers fear that the store's volume of business and discount policies will further injure the local economy, while others hope that the new business will shore up the community's economy. Unfortunately, while many strong beliefs are held about the impact of the large mass retailer on rural economies, little systematic research has been done to ascertain the actual effect of a mass merchandiser such as Wal-Mart stores on rural areas.

This report describes a study which assesses the impact of the opening of a Wal-Mart retail outlet on the economic environment of the associated host county. The study examines all the rural counties in the twenty-six states where Wal-Mart has opened stores, contrasting them with rural counties in the same states which do not host a Wal-Mart retail outlet. The analysis includes a before/after analysis of impact on the host county and also examines both short-term and long-run impacts.

The research study has been designed to answer these specific questions:

Does the introduction of a Wal-Mart store into a rural county have a positive or a negative impact on the county's economy?

How do rural Wal-Mart counties' economies compare with those of rural non-Wal-Mart counties, rural counties in general, and the statewide economy?

What is the impact of Wal-Mart on specific sectors of retail trade, such as building materials, and apparel?

Does the impact of Wal-Mart change over time, such that the short-term impacts are different from the long-run impacts?

RESEARCH DESIGN

The study was designed to discern the short-term and longer-run economic effects associated with the opening of discount, mass volume retail outlets in rural areas. The retailer studied was the Wal-Mart Corporation. The geographic areas included in the analysis were all the non-SMSA counties in the 26 states in which Wal-Mart opened retail operations during the period 1969 to 1987.

The scope of the study was limited to the economic impact on the host county. It excludes, therefore, the effect on other communities in bordering or nearby counties and the effect on individual small towns or communities. Counties were chosen as the unit of analysis because of the unavailability of rural economic data at the community or city level.

The study is divided into three parts. The first examined the annual average rates of change on 18 broad measures of economic activity before and after the Wal-Mart opening. These constituted the simplest level of analysis, in that they did not consider the overall economic climate of the county at the time of opening.

The economic measures included were:

1. Population, as of July 1
2. Real Personal Income
3. Real Per Capita Personal Income
4. Real Wages and Salaries
5. Real Non-farm Proprietors' Income
6. Real Earnings in Retail Trade
7. Real Earnings in SIC 52 - Building Materials
8. Real Earnings in SIC 53 - General Mdse
9. Real Earnings in SIC 54 - Food
10. Real Earnings in SIC 55 - Automotive Dealers
11. Real Earnings in SIC 56 - Apparel Stores
12. Real Earnings in SIC 57 - Furniture Stores
13. Real Earnings in SIC 58 - Eating Places
14. Real Earnings in SIC 59 - Misc Retail Trade
15. Total Employment
16. Total Wage and Salary Employment
17. Non-Farm Self Employment
18. Employment in Retail Trade

The second part of the analysis consisted of the construction of 5 sets of indices for each economic measure. The indices were constructed using 1969 as the base period. The indices were:

1. The aggregate statewide index
2. The aggregate rural areas index
3. The aggregate Wal-Mart counties index
4. The aggregate non Wal-Mart counties index
5. The individual county index

The short-term or marginal impacts were measured by the change in the relative ratios of each index during the three period centered on the opening date of the Wal-Mart store. The measure of the longer-run impacts used the period one year prior to opening to the end of the data base (1987).

The third and final part of the study presents a regression analysis of the individual county growth rates for all 18 measures of activity. The inclusion of a dichotomous qualitative variable indicating the presence of a Wal-Mart retail outlet was utilized to compare counties with a Wal-Mart retail outlet and those without one.

DATA SOURCES

The time span for all data series was the period 1969 to 1987. The first Wal-Mart stores were introduced in 1968. The data for 1988 and 1989 were unavailable at the time of analysis. The raw data were extracted from three sources:

1. Annual estimates of personal income, population and employment were taken from the files compiled by the U.S. Department of the Commerce, Bureau of Economic Analysis (BEA).

2. All income items were deflated to reflect real measures of activity. The deflator utilized for these series was the All Items U.S. Consumer Price Index for Wage and Salary Earners published by the U.S. Department of Labor, Bureau of Labor Statistics (BLS).

3. Data for individual store locations, opening dates and other related data items were provided by the Wal-Mart Corporation.

The initial data extracted from the BEA files consisted of 17 broad measures of income and employment for the 26 states in which the Wal-Mart Corporation had retail activity during the 1969-1987 time period. The data were extracted for each of the 1,885 rural counties in these states, in addition to the statewide aggregates.

The states included in the study were: Alabama, Arizona, Arkansas, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, North Carolina, Nebraska, Nevada, New Mexico, Ohio, Oklahoma, South Carolina, Tennessee, Texas, Virginia and Wisconsin.

The regional classification of the states is as follows:

Great Lakes States: Illinois, Indiana, Ohio, Wisconsin
Plains States: Iowa, Kansas, Minnesota, Missouri, Nebraska
South Atlantic States: Georgia, Florida, South Carolina, North Carolina
East-South Central States: Mississippi, Alabama, Tennessee, Kentucky
West-South Central States: Arkansas, Texas, Oklahoma, Louisiana
Mountain States: Arizona, Wyoming, New Mexico, Colorado

The number of Wal-Mart stores opened by year and by state during the period is presented in Table 1.

The original 17 data items included were:

1. Population
2. Total personal income
3. Wage and salary disbursements (payrolls)
4. Non-farm proprietors' income
5. Earnings in retail trade
6. Earnings in SIC 52 - Building material dealers
7. Earnings in SIC 53 - General merchandise stores
8. Earnings in SIC 54 - Food stores
9. Earnings in SIC 55 - Automotive dealers
10. Earnings in SIC 56 - Apparel stores
11. Earnings in SIC 57 - Furniture stores
12. Earnings in SIC 58 - Eating & drinking places
13. Earnings in SIC 59 - Miscellaneous retail stores
14. Total Employment
15. Total Wage and Salary Employment
16. Non-farm self Employment
17. Employment in retail trade

Two additional variables were added to this file. The first was a dummy variable denoting the presence of a Wal-Mart store in the county (WMCD). The second was the first store opening date for those counties with a Wal-Mart retail outlet.

TABLE 3
Percent Increase in Economic Indicator
Wal-Mart and Non Wal-Mart Rural Counites
1969 - 1987

INDICATOR	PERCENT INCREASE		
	RURAL WAL-MART	RURAL NON WAL-MART	TOTAL STATE
Population	22.9	12.6	25.2
Real Personal Income	69.2	52.4	68.8
Real Wage & salary disbursements (payrolls)	37.7	35.4	34.8
Real Non-farm proprietors' Income	42.6	30.7	48.6
Real Earnings in retail trade	19.9	-2.4	34.0
Real Earnings Building material dealers	-33.1	-42.2	0.8
Real Earnings General merchandise stores	-14.9	-31.4	-9.3
Real Earnings Food stores	46.2	14.8	41.4
Real Earnings Automotive dealers	-4.7	-17.3	13.9
Real Earnings Apparel stores	4.4	-12.4	17.4
Real Earnings Furniture stores	11.6	0.4	38.7
Real Earnings Eating & drinking places	93.5	43.9	102.7
Real Earnings Miscellaneous retail stores	24.5	2.7	66.4
Total Employment	35.2	24.4	47.8
Total Wage & Salary Employment	34.1	26.3	43.5
Non-farm self Employment	91.1	68.1	123.9
Employment in retail trade	53.0	30.2	65.6

Attachment C

ILLUSTRATIONS: ROBERT CRAWFORD

WAL-MART: A RETAILING CATALYST

Building strong relationships with local communities through good will is one way Wal-Mart forges its own business.

BY STEVE JACOBER

On the edge of town, a lone sign appears in a grass-covered field colored with a dash of wild flowers. As people drive by, the stark, bold words "Wal-Mart Opening Soon" proclaim the arrival of the county's newest shopping emporium. Consumers, already aware of Wal-Mart's competitive pricing, eagerly await the opening of the new store.

Local retailers, on the other hand, are even more familiar with the newcomer. The arrival of Wal-Mart, known to be a tough competitor, kindles a different kind of anticipation. But what do these small-town

"I don't really believe that businesses in the community have folded simply because of Wal-Mart."

businessmen expect, famine or feast?

To answer this question, *Discount Merchandiser* contacted chambers of commerce across Wal-Mart's trading area. Acting almost as a spokesperson for all the respondents in our survey, Craig McCoy, manager of the Pineville, LA, Chamber of Commerce succinctly answers the question. "I don't really believe, nor can I honestly say that businesses in the community have folded simply because of Wal-Mart," he explains. "In my 13 years of chamber work I can't put my finger on one business that Wal-Mart, per se, put out of business. Some of these other chains already had problems that were not competition-related. It was their management philosophy and their debt structure. They were already struggling. All too often, they're more than willing to point a finger and blame someone else, rather than fix their own problems. After all, there's been a small-business crisis nationwide; this is nothing new."

But this is not how some of the press describe the situation. They paint a dark picture of Wal-Mart as an omnivorous behemoth, greedily swallowing up Main Street, USA.

Tugging at the heart strings is one report, for instance, from *U.S. News & World Report:* "As a result [of Wal-Mart's coming to town], downtown business districts began to empty, leaving few sponsors for Little League teams and a smaller pool of advertisers for the high school yearbook."

The New York Times Magazine conjures up a ghost town: "About a mile to the east of [Wal-Mart], stores stand empty on the two-block strip of Main Street that was once the heart of Independence. 'For Sale' and 'For Rent' signs are taped to their dusty windows. Most of the surviving shops are struggling to stay alive."

The *Dallas Morning News* quotes one businessman as bluntly saying, "Wal-Mart killed our downtown."

Yet, in town after town, *DM*'s survey among business executives tells a different story—one that emphasizes the fact that consumers make the decisions as to which stores serve them best. At the same time, they point to benefits reaped by other retailers as a result of Wal-Mart's entry into their town. Sidney Abegg, executive director of the Nacogdoches, TX, Chamber of Commerce, describes the situation this way: "[The business environment] has changed some since Wal-Mart came. But you must realize that as any large discount retailer, and not just Wal-Mart, comes into a small town, it's going to change the way people shop."

Reports survey participant from the Scotts Bluff, NE Chamber: "When Wal-Mart came in, some of the smaller businesses felt threatened. But Wal-Mart has created a whole new traffic pattern for our shoppers. Perhaps those shops hadn't changed the way they were doing business in over 20 years," she explains. "So, there was a transition period after Wal-Mart came and this forced people to rethink what they were doing and they have now tried some new marketing and merchandising strategies."

Says Robert Lee of Texarkana, AK, "The Wal-Mart opening probably impacted some businesses to a small degree, but we didn't have anyone close up shop." Kenneth Hayes, mayor of Bradley, IL, adds, "To my knowledge Wal-Mart has not hurt any other business, in fact, shops near the store claim their business is up because of the increased traffic." Summerville, SC, has two Wal-Marts; Dusty Rose, executive director of the Chamber of Commerce, relates that "the two stores are not far from our Main Street area. It is thriving. Wal-Mart hasn't had a negative effect at all."

"We're one of Oklahoma's original Main Street towns," explains Ray Wheatley of the Okmulgee Economic Development Council. "Our Main Street is doing better than it's done in a long while. In the long run, we've probably seen most of any negative impact already since Wal-Mart's arrival. Now it's just the positive, long term we're looking at."

There is almost universal consensus among our sampling of chamber executives that Wal-Mart's arrival acts as a catalyst for improving the way many existing businesses operate. Diana McMillian, from the Clinton, IN, chamber, relates, "We have some small

BUILDING BRIDGES

Wal-Mart encourages its associates to act as good will representatives for the company. As a result, this discounting giant is laying the foundation for a loyal customer base.

In Summerville, SC, Wal-Mart is active in a program called Partners in Education. Dusty Rose of the local Chamber of commerce explains that "at the beginning of each school year, store associates go to the local elementary school and help the little people on and off the buses and then assist them in finding the right classroom. In the afternoons, they are back to help the kids find the right bus to go home. This goes on for a couple of days until the little students find their way around. And in return, whenever the store has a ribbon-cutting ceremony or some such thing, the school choral group goes out there and performs for the customers."

In Paducah, KY, Wal-Mart, in conjunction with a local bank, set up a model store in the elementary school and let the students run and learn about the operation. In this way, Wal-Mart develops a very strong relationship with youngsters at an early age.

Fred La Pointe, Prairie du Chien's chamber manager, says "Wal-Mart's associates conducted a car wash to help purchase a new ambulance for the local hospital. It is not unusual to see their employees help winterize senior citizens' homes, participate in city-wide clean up days, host voter registration, and the like. I have a press release here that says Wal-Mart, through their college-bound scholarship program has awarded more than $5.1 million to high school seniors nationwide."

In Decatur, AL, Wal-Mart takes good care of the community's senior citizens. Explains Irwin Commander, "They open their doors early, maybe three or four times a year, and have breakfast for senior citizens. They may even have buses for them. You know, sometimes the elderly feel intimidated by the crowds at most stores. So by allowing them to shop early, giving them discounts and special attention creates a very nice atmosphere. They even have little door prizes."

From the oldest to the youngest, Wal-Mart makes a concerted effort to build a lasting bridge between store and customers.

Commerce. "The store keeps people from going to shop in Cookeville and other towns near us. If they weren't here, those tax dollars would be leaving our city; so now, the sales tax goes to help our own school system." For some communities with local manufacturing, Wal-Mart's involvement with the "Buy American" campaign has also helped bolster employment. "Ithaca Underwear is made right here [Cairo, GA]," says Peggy Chapman, "and since Wal-Mart came in, their products are now sold in the stores. As a result the company has expanded and been able to hire more people."

In Fort Smith, AR, Ron Russell, president of the chamber of commerce, informs that they have "many local industries that supply Wal-Mart, especially since the inception of their 'Buy America' efforts. In fact, this afternoon, I will show an existing industry three 30,000-square-foot buildings that they are considering expanding into. I think they will be hiring additional employees and leasing some additional space."

Some towns are also fortunate enough to receive a more direct type of economic boost from Wal-Mart. Spokespeople from Tomah, WI; Cairo, GA; and Prairie du Chien, WI, related how they were granted significant economic development grants payable to the town over a period of three years. These grants were made available from Wal-Mart headquarters in Bentonville, AR.

Locally, Wal-Mart store managers provide merchandise for a host of community activities. Many chambers of commerce mentioned $1,000 college scholarships for local high school students. Ray Wheatley in Okmulgee, OK, told how the store "had a fund-raiser for Christmas lights in the downtown area. They also give space in their stores for back sales, chili cookoffs, and that kind of thing." In Albert Lea, MN, Wal-Mart provided matching funds for local car-wash fund raisers. Peggy Chapman claimed that "the first thing the store manager did when they opened their doors was to present a $500 check to the high school band."

Butch Opsahl of Casa Grande boasted that when Wal-Mart came in "they adopted our literacy project as a pet charity. They made an employee project out of it and raised $500. Sam Walton then flew in and gave us another $500."

The list of local charities supported by Wal-Mart goes on and on: the Lions' Club, the Heart Fund, March of Dimes, the local preservation society, the Fraternal Order of Police, United Way, and the Cancer Society. Most chamber of commerce executives contacted by *DM* painted a picture very contrary to the one described in some papers and magazines. Craig McCoy of Pineville, LA, spoke of how Wal-Mart helped raise $90,000 for a liver transplant for a local child. Newt Waller of Flagstaff, AZ, sums up the situation by explaining that "Wal-Mart is an excellent corporate citizen. They have simply participated in so many projects—over and above what many other stores would even consider doing."

By working hand-in-hand with these small-town locations, Wal-Mart fosters a true partnership with their customers. It is this intimate relationship with the consumer and the community that makes up a large part of Wal-Mart's legacy of success. By helping to build a strong sense of civic pride, Wal-Mart fuels its own corporate growth. As one chamber spokesperson reports, "Wal-Mart has created a sense of belonging for our community. Many of us have talked about how we used to go to Thomasville to do our shopping, but we don't have to do that any longer. We just buy what we need locally. And that is why we're so grateful to Wal-Mart." □

downtown businesses that suffered at first, but now they have diversified into different specialty areas and seem to be doing real well. I think that everyone now shares in the wealth because a lot of people are coming to Clinton to shop."

Says one spokesperson from Rocky Mount, NC. "I think Wal-Mart's arrival has tended to upgrade all the competing retailers in the area. It's really noticeable when you walk into these stores." In Tomah, WI, Julie Zebro relates that "One hardware store in fact, has moved into a larger building because of the increased traffic and is doing thousands of dollars worth of expansion."

In many small towns, Wal-Mart's entry into the market precipitates a sharpening of merchandising skills, whether it be an increase in service or a move into a specialty niche. In Prairie du Chien, WI, Fred La Pointe, the chamber of commerce's manager, points to a Coast To Coast store that, as he describes it, "was on its last leg. After Wal-Mart came, that store is now doing a very brisk business."

A Ben Franklin unit in McAlester, OK "halved its floor space as a result of Wal-Mart moving in," according to Gene Walker. "They have changed their buying habits and have survived. Oddly enough, people go into the store and say, 'Oh, you've expanded!' when all they really did was push the merchandise closer together and make it seem as though they have more inventory."

While some retailers may not relish the thought of having to redirect their marketing or merchandising efforts to stay competitive, there is one aspect of having Wal-Mart as a neighbor that they do enjoy. And that is the company's ability to draw traffic.

Bob McCoy, president of the Albert Lea, MN, Chamber of Commerce, reports that "Wal-Mart being here has increased our drawing power significantly. When you couple them with our Shopko, Pamida, and two shopping centers in a town of 19,000 and a downtown business district that has become more viable, we have become a major trading area. Our retail sales in this town have been on a steady increase, even with the economy, the drought, and simply being in the Midwest. The Wal-Mart has helped us continue our 5 to 6 percent increase in retail sales."

Other respondents echo this sentiment:

•Carthage, TN, "Wal-Mart is bringing in people from other communities. It brought in new trade that wasn't here before."

•Scotts Bluff, NE, "We went from a trading radius of about 75 miles to about 125 miles because of Wal-Mart."

•San Benito, TX, "I see a lot of people coming into this area to shop because of Wal-Mart."

•Waverly, IL, "They've widened the retail area of our community."

•Cairo, GA, "What Wal-Mart did was bring people into our county to shop who had never been here before."

While this newfound wealth of potential shoppers is of benefit to existing businesses, it also lures others into the area. Irwin Commander, executive director of the Decatur, AL, Chamber of Commerce, relates that "the shopping center Wal-Mart moved into had virtually no other tenants until they came in. It has attracted a yogurt store, a couple of pizza places, and a dress store; I wouldn't hesitate to say that Wal-Mart and the increased traffic are directly responsible for that."

Service operations, such as gas stations, restaurants, insurance and travel agencies, beauty parlors, and even a tanning center were frequently mentioned as types of businesses that were attracted by the opening of a Wal-Mart. In addition to this, other retailers also find the number-two discounter to be good for business. Rocky Mount, NC, saw the opening of a TJ Maxx, a Brendle's, a toy store, and a compact disc operation because of Wal-Mart. Summerville, SC, attributes a new women's apparel store and a gun shop to their Wal-Marts.

And what does all this mean to many a Small Town, U.S.A.? Increased employment, a healthier local economy, and the ability to provide their citizens with more services. In Cairo, GA, Peggy Chapman told *DM* "They have been a very good business partner for Grady County. Wal-Mart has created employment opportunities for our citizens, not only because of their store, but also because of the businesses they have attracted to the shopping center."

"Wal-Mart has had a very positive effect on our community," explains Wallace Huston of the Sparta, TN, Chamber of

CHAMBERS OF COMMERCE: TELLING A DIFFERENT STORY

Discount Merchandiser recently polled over 30 chambers of commerce across Wal-Mart's trading area to discover what effect the opening of a new store has on the community. Cities and towns with Wal-Mart stores opened anywhere from one month to over 10 years were contacted. Below is a complete list.

Birmingham, AL	Kansas City, MO
Decatur, AL	Rocky Mount, NC
Texarkana, AR	Scotts Bluff, NE
Ft. Smith, AR	Hobbs, NM
Casa Grande, AZ	Ada, OK
Flagstaff, AZ	McAlester, OK
Titusville, FL	Okmulgee, OK
Cairo, GA	Gaffney, SC
Bradley, IL	Summerville, SC
Sparta, IL	Carthage, TN
Waverly, IL	Sparta, TN
Clinton, IN	Nacogdoches, TX
Pineville, LA	San Benito, TX
Paducah, KY	Prairie du Chien, WI
Albert Lea, MN	Tomah, WI
Ferguson, MO	

Attachment D

Little Town That Saved Itself

Viroqua had a dingy, let-it-slide look. Then a sign appeared in a cornfield, and things began to change

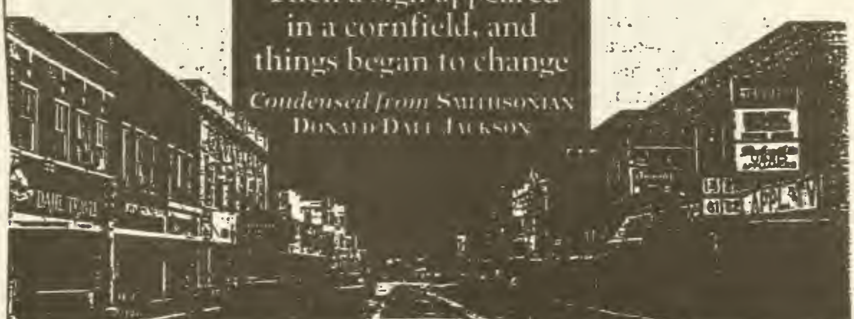
Condensed from SMITHSONIAN
DONALD DALE JACKSON

ROLLIE FELIX remembers a time in the 1920s when Viroqua, Wis., was a bustling county seat, a real neighborly community. The rich hill-and-coulee terrain that lists toward the Mississippi River 20 miles west supported hundreds of tobacco and dairy farms. Gradually, the smaller ones consolidated, but farm families stayed on even after they sold out, often moving into town. Rollie could identify the men by their coat size as they passed through the door of the clothing store he ran, as his father had before him, and his son, Steve, does today.

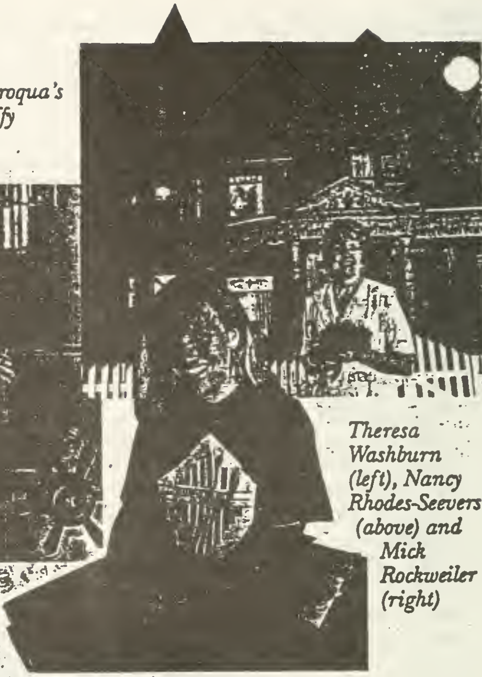
Then, in the 1970s, Viroqua (Vee-RO-kwa), like hundreds of other small American towns, lost confidence. By the mid-1980s, the four-block-long business district had started downhill. Storefronts deteriorated, and awnings sagged. The railroad was gone, along with the creameries and cheese factories. Kids moved away as soon as they finished school.

The worst part was the loser mentality. The same seven or eight people turned up at every town meeting. Whatever the question, Viroquans voted no and felt sorry for themselves.

Then in the spring of 1986, a sign appeared in a cornfield north of town: WAL-MART DISCOUNT STORE COMING SOON! Fred Nelson felt his stomach lurch. His general store was the biggest retailer of farm supplies, hardware and clothing in Viroqua—and it was squarely in Wal-Mart's path. Other merchants didn't seem alarmed, apparently unconcerned or unaware of what was about to hit them. But Fred knew that store loyalty rarely survives a head-on clash with the likes of Wal-Mart. He knew



Some players in Viroqua's battle: Banker Duffy Hoffland (below)



Theresa Washburn (left), Nancy Rhodes-Seevers (above) and Mick Rockweiler (right)

that he had to act, and quickly.

By the time the Viroqua Wal-Mart opened that fall, Fred was prepared. He had eliminated health and beauty aids (no underselling a big discounter there), moved upscale on small appliances, upgraded his service department and opened on Sundays. He took a smaller profit on price-sensitive items, like power tools and motor oil, while broadening his product range in areas like farm tools and local crafts.

Nelson's Agricenter survived, but one by one other downtown businessmen fretted and stewed and began to close—a dime store, a department store, a hardware store. Viroqua seemed to be acting out a self-fulfilling prophecy of doom. Heard everywhere was the talk of quitters.

Nancy Rhodes-Seevers watched all this from her Victorian bed-and-breakfast on Jefferson Street. She had returned to Viroqua from Southern California, seeking roots, and she had little tolerance for the woe-is-me mind-set. She began pestering state bureaucrats with letters and calls, looking for help. Eventually she came up with the name Bert Stitt, who had the title "downtown coordinator for the State of Wisconsin." Nancy had found Viroqua's Mr. Right.

Stitt is a zealot with shining eyes

whose mission is saving the souls of America's downtowns. Now a freelance consultant, he helps reignite a sense of community and economic health.

Stitt was reluctant to take on a new assignment, but Nancy badgered him until he agreed to visit

Viroqua. In June 1988, Rollie Felix, Fred Nelson and 34 other town leaders showed up to hear Stitt alternately insult and challenge them.

"You may not want to hear this," he began, "but on a scale of one to ten, your downtown is maybe a two. You'll have to turn Viroqua around yourselves, and it will take money, time and serious commitment."

Among possible steps they could take, Stitt described the National Trust for Historic Preservation's "Main Street" program. If Viroqua were chosen as a "Main Street" city, the state would provide technical aid, but Viroquans would have to raise $150,000 for a three-year revitalization campaign. Fred Nelson and the rest listened politely, but skeptically.

Four months later, Nancy Rhodes-Seevers rounded up 66 people for an all-day session at Nate's Supper Club. They discussed what was wrong with Viroqua and the changes they wanted to see. Most Viroquans emerged bristling with confidence. Stitt's goading seemed to have connected.

"I convinced them their problem wasn't Wal-Mart, it was them," he says now. "They had to focus on what *they* were and weren't doing and how to change it."

But there was all that money to raise. Duffy Hoffland, president of the State Bank, had deep doubts it could be done. But, biting the bullet, he volunteered to raise the $150,000. "We were coming around to can-do from can't-do," he says.

Duffy zeroed in on target sums for 160 businesses, each according to its size. He played competitors against one another. He asked members of the newly named Viroqua Revitalization Association to call their friends.

Incredibly, the pledges came. Mick Rockweiler had kept his distance, unconvinced that the project would help and worried that he would be asked to remove the large signs outside his appliance store as not in keeping with the town's historic character. But even he ponied up, mindful that "as one of the largest retailers in town I should be an optimist." In the end, the banks and almost every downtown merchant contributed. Duffy raised $170,000.

The next hurdle on Viroqua's road to revival was winning "Main Street" designation. Nancy Rhodes-Seevers, Steve Felix, Duffy Hoffland and city councilman Wayne Gates were selected to pitch Viroqua's case before a panel in Madison, the state capital, on July 27, 1989. Twelve Wis-

consin towns were vying for five spots. Duffy worried that Viroqua (pop. 3922) might be too pint-size. Most "Main Street" towns are between 5000 and 50,000 in population.

It was Steve's idea to dress in turn-of-the-century outfits—the men in cutaways and striped pants, Nancy in an hourglass gown—to set themselves apart while displaying fidelity to historic preservation. They felt so good after the meeting ("We blew their socks off!" Duffy said as they left) that they stayed in costume for lunch at an Italian restaurant. A waitress asked if they had come from a wedding, and Nancy replied, "Yeah, I married all three of 'em!" When word came in August that Viroqua had been selected, Fred Nelson remembers thinking, *Maybe we're doing something right.*

A few months later, an ad in a Madison newspaper to run Viroqua's "Main Street" campaign caught Theresa Washburn's eye. Just back from a Peace Corps tour in the Dominican Republic, she was 27, with a degree in environmental design and an interest in historic restoration. Once Viroquans interviewed her, they promptly offered the $23,000 position. The daughter of an Army doctor, she had had a rambling, rootless childhood. Now, Viroqua became her surrogate hometown.

She started slowly—meeting people, organizing promotions, passing the word about business workshops. Her top priority was improving Main Street's dowdy appearance. She met with Duffy Hoffland and the president of Viroqua's other bank, and asked them to establish a low-interest-loan pool for renovations. When the bankers proposed a rate of one percent below prime, they got their first inkling of the feisty new force in town.

"What's such a big deal about one percent?" Washburn demanded. The bankers huddled and offered a lower rate.

After one downtown building owner took out a loan and began redoing three storefronts, a domino effect ensued. Steve and Rollie Felix fixed up their store. Then Lavonne Swiggum gave her Viroqua Home Center a face lift and took over the abandoned building next door. The Viking Inn spruced up its extei
as did a Main Street insurance office. When the dust settled, 13 stores had been renovated, and Viroqua looked almost snappy—in a historically correct sort of way.

Washburn kept the ball rolling with gambits to promote town spirit. One spring morning, businesspeople rose before dawn to cook a free breakfast for area farmers. The town fathers were persuaded to invest $350,000 in streetlights with a 1930s look—a project languishing for years—and a crew of volunteers dazzled townsfolk by stringing Christmas lights along the tops of buildings to brilliantly outline Main Street's skyline. Even a skeptical Mick Rockweiler was beginning to discern benefits. "I don't think it sold one refrigerator for me,"

says, "but it sure brightened up the town."

Wal-Mart had been a wake-up call. In all, more than seven new businesses, four expansions and 22 jobs have been created, and Viroqua is one of the shining stars of the "Main Street" program. A CBS News report and a *Wall Street Journal* article led to visits by citizens of other struggling communities looking to Viroqua as a model.

The real payoff was neither celebrity nor profit but the confidence and cohesion Viroqua discovered within itself. "We realized we can do something together," Lavonne Swiggum says. Councilman Wayne Gates ticks off several illustrations of the new civic spirit—a $500,000 arena financed by contributions, a campaign for a fitness center that netted nearly $1 million in donations, an explosion in the historical society's membership from 50 to 547. Even Wal-Mart has joined the parade, contributing to "Main Street" projects and participating in special events.

Surveying the transformation of his town, Wayne crows, "We've gone from a 'mine-and-yours' town to an 'our town.'"

Attachment E

Industry Land May Be Site For Retailing

Sun. May 29 94

Giuliani Officials Seek To Relax Zoning Limits

By TOM REDBURN

Attempting to spur redevelopment of thousands of acres of abandoned and underused industrial land in New York City, top city officials are proposing to Mayor Rudolph W. Giuliani that the city relax restrictions in manufacturing areas to encourage the entry of the huge specialized discount retailers and warehouse stores so popular in the suburbs.

"We have to have a more fluid land-use policy," said Clay W. Lifflander, president of the City Economic Development Corporation, a nonprofit arm of the city government responsible for attracting and retaining business in New York. "Large retail stores are an example of what we need to be more open to."

Officials of the Giuliani administration, in interviews yesterday and Friday, said that the Mayor would be presented with a range of recommendations next week to make it easier for larger retailers to locate in the city. These include raising the limit on the size of stores in certain areas zoned for light and medium manufacturing to 100,000 square feet or more, from a current 10,000 square feet.

Under present rules affecting some 17,000 to 20,000 industrial acres — or about 10 percent of the land in New York — most retailers need to obtain a zoning variance to build a large store, a highly complex gantlet that can take years to run and discourages many from even trying.

Looking to fill the employment vacuum left by the shrinkage of manufacturing and the loss of many of New York's traditional department stores, city officials are aiming to create more jobs, generate higher tax revenues and encourage city residents to shop for big-ticket goods like furniture and home appliances in the city rather than driving to the suburbs.

Making it easier for large retailers to enter New York City is a highly sensitive issue within the Giuliani administration. It pits the Mayor's desire to stimulate economic development and growth, particularly outside Manhattan and in some of the more rundown sections of the city, against the interests of small merchants and storekeepers who form a crucial element of his political constituency.

Smaller merchants are concerned that an influx of big discounters and other superstores in the city would be a direct threat to their livelihood and undermine the vitality of dozens of local shopping districts scattered across the city. The proposal also may raise fears among some experts and local business leaders who argue that the city should not give up on the manufacturing sector, which still provides tens of thou-

Giuliani Officials Plan for S

Continued From Page 25

sands of jobs for relatively unskilled workers, including many who do not speak English well.

Mayor Will Have Options

The plan — being prepared by Mr. Lifflander, City Planning Chairman Joseph B. Rose and Deputy Mayors Fran Reiter and John S. Dyson, will set out a number of options for the Mayor. But all foresee much wider retail and commercial use of land now vacant, underused or occupied by abandoned multi-story industrial buildings.

"They are looking at all the possibilities," said Cristyne F. Lategano, Mayor Giuliani's press secretary. "The Mayor has not made any decisions yet, but he is looking forward to what his economic team develops."

Any proposal backed by the Mayor would face a number of hurdles. After a state-mandated environmental impact study, it would need to be approved by the City Planning Commission and the City Council. The process is likely to take several years and prove highly controversial.

The plans for redeveloping derelict industrial zones are under discussion at the same time the Giuliani administration is looking at ways to avoid concentrating the placement of homeless shelters, drug clinics and other social service operations in residential neighborhoods, where they often generate enormous political controversy and sometimes contribute to increased crime and the degradation of the quality of life.

Mr. Rose has already recommended that light manufacturing zones should be opened to social service centers.

Zoning Revised in 1974

"A reform and re-evaluation of our zoning laws is long overdue," Mr. Rose said. "We are looking at all of these related issues — the placement of social service centers, restrictions on manufacturing zones, and the like — in an effort to rationalize the way decisions are made in the city." The last major zoning revision in the city was in 1974.

Some of the nation's largest discount and speciality retailers — like Kmart, and Home Depot in Queens, Bed, Bath and Beyond and Barnes & Noble in Manhattan, and Caldor's in Brooklyn and Queens — have already started to enter New York City after years of shunning it as too expensive and too congested. So far they have generally located in or near traditional retailing centers of the city.

But those companies and others such as Walmart, the Price Club and the Sports Authority increasingly see New York and other large cities as the last untapped territory in a national landscape now saturated with suburban shopping centers. To build the high-volume, low-margin specialty discount stores with extensive parking that has proven a formula for retailing success in recent years, they need large parcels of land, often 10 acres or more. There are few, if any, such sites available in areas of the city now zoned for commercial and retailing use.

Rather than see more such stores built in surrounding suburban locations, where they serve as a powerful lure to city residents to spend their money elsewhere, officials are determined to clear away obstacles to their building in New York City.

"We've got to open our eyes to what is happening all around us," said Mr. Lifflander of the economic development corporation. "People worry about the decimation of neighborhood

ZONING

Beyond Industry

New York City areas zoned for in[...] large retailers or social-service c[...] administration proposals.

uperstores in Industrial Are(

dustry could be considered for
enters under Giuliani

Source: City of New York Department of City Planning

retail. It's being decimated already. If we won't have large-scale retailers, they will just be decimated to the benefit of New Jersey, Nassau County and Connecticut."

Limits Are Considered

City officials are looking at a number of strategies aimed at easing the impact of superstores on local merchants. Mr. Lifflander said that one possibility may be to limit big food supermarkets, which tend to cater to local communities, in order to help sustain the thousands of green grocers and food stores that serve neighborhoods in the city.

But big stores that draw from a wide region, such as home appliance centers and furniture warehouse stores, would be encouraged to locate at abandoned industrial sites, such as the old Taystee Bakery site in Fl ing that Home Depot wants to bu

"The local T.V. shop is not goir survive whether you keep Top's pliances out of the city or not," Lifflander said.

City officials also contend that adverse impact of big retailers local merchants may have been e: gerated.

Small Business Listens

Local political officials with c ties to the city's well-organized si business sector appear more re tive to such arguments than in past.

"We understand the concern: the mom-and-pop stores," said)

The aim is to creat jobs, generate taxe and encourage shopping in the cit

Andrew, spokesman for Claire : man, Queens borough president: we think they can continue to op(with minimal impact from the l retailers by being more flexible service-oriented."

Still, small storekeepers are li to vigorously oppose any plan might throw open the doors of York City to big retail operation

"It is already difficult enoug run a small business in the city," William Kurland, co-owner of Sh speare & Co., a popular books(with locations on the Upper West and in Astor Place. "The threa that the Walmarts and Barnes & bles will destroy what is special a New York City. It is almost impo ble to compete against multinati enterprises backed by some of largest corporations in the count

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TESTIMONY BY

MANUFACTURERS' AGENTS NATIONAL ASSOCIATION

PRESENTED TO

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON SMALL BUSINESS

THE IMPACT OF DISCOUNT SUPERSTORES ON SMALL BUSINESS
AND LOCAL COMMUNITIES

AUGUST 10, 1994

GOOD MORNING MR. CHAIRMAN AND HONORED MEMBERS OF THE COMMITTEE ON SMALL BUSINESS. LET ME FIRST SAY HOW VERY MUCH MY ASSOCIATION APPRECIATES THE OPPORTUNITY TO DISCUSS THE IMPACT OF DISCOUNT SUPERSTORES ON SMALL BUSINESSES AND LOCAL COMMUNITIES. I AM LIONEL DIAZ AND I PRESENTLY SERVE AS SENIOR VICE PRESIDENT OF MANA WHICH IS AN ACRONYM FOR THE MANUFACTURERS' AGENTS NATIONAL ASSOCIATION. MANA IS A NON-STOCK, NON-PROFIT EDUCATIONAL ASSOCIATION, WITH A CONSTITUENCY CONSISTING OF SOME 32,000 AGENTS AND MANUFACTURERS. WE ARE THE LARGEST ASSOCIATION OF ITS KIND IN THE WORLD. MANUFACTURERS' AGENTS AS SMALL BUSINESSMEN EPITOMIZE THE ENTREPRENEURIAL SPIRIT WHICH MADE THIS COUNTRY GREAT. EVERY DAY WITHOUT HAND OUTS, WITHOUT ANY GUARANTEES, WITHOUT ANY GOVERNMENT SUBSIDIES, THESE "REPS" REALIZE "THERE AIN'T NO FREE LUNCH" AND BET THEIR TIME, TALENTS AND ENERGY THAT THEY CAN GENERATE ENOUGH SALES TO EARN COMMISSION DOLLARS TO COVER THEIR EXPENSES, SALARY AND PUT SOMETHING AWAY FOR GROWTH, RETIREMENT AND MAYBE EVEN HEALTH CARE.

TENS OF THOUSANDS OF SMALL AND MEDIUM SIZE MANUFACTURERS THROUGHOUT THE COUNTRY UTILIZE THIS SYSTEM OF SELLING TO TAKE THEIR PRODUCT TO MARKET.

IT IS ONLY THROUGH THE EFFECTIVENESS AND PERFORMANCE OF THESE INDEPENDENT REPRESENTATIVES THAT THOUSANDS OF SMALL AND MEDIUM SIZED COMPANIES CAN EFFECTIVELY AND ECONOMICALLY MARKET THEIR WARES. THIS IS PARTICULARLY TRUE OF NEW PRODUCTS WHERE A DIRECT SALARIED SALES FORCE IS COST PROHIBITIVE. SINCE MANUFACTURERS' REPRESENTATIVES ARE COMPENSATED IN THE FORM OF COMMISSION, NOT SALARY, COMPENSATED FOR SUCCESSES, NOT FAILURES, THERE IS NO COST TO THE MANUFACTURER UNTIL A SALE IS MADE.

THESE SMALL BUSINESSMEN, BECAUSE THEY USUALLY REPRESENT SEVERAL DIFFERENT COMPANIES, FURTHER REDUCE THE COST OF SALES BY SPREADING THEIR COSTS THROUGH EIGHT OR TEN COMPATIBLE BUT DIFFERENT PRODUCT LINES ON ONE SALES CALL. "REPS" OR AGENTS ARE, THEREFORE, NOT MIDDLEMEN IN IT'S PRESENT CONNOTATION -- THEY ARE COST-EFFECTIVE AND A COST-EFFICIENT ALTERNATIVE TO A FULL TIME SALARIED COMPANY SALES FORCE.

WITH THE ADVENT OF WHAT YOUR COMMITTEE REFERS TO AS SUPERSTORES AND THEIR TREMENDOUS BUYING POWER, BY REASON OF SHEER SIZE, MANY OF THESE SUPER DISCOUNT STORES HAVE THROUGH THE YEARS ATTEMPTED TO CIRCUMVENT THE NORMAL CHAIN BY ANNOUNCING TO OR COERCING THEIR SUPPLIERS INTO TERMINATING ALL RELATIONSHIPS WITH INDEPENDENT REPRESENTATIVES. THIS UNETHICAL AND ILLEGAL PRACTICE HAS HAD A DOMINO OR "ME TOO" EFFECT NOT ONLY IN RETAIL COMMERCE, BUT THROUGHOUT INDUSTRY SINCE MOST PRODUCTS SOLD IN THESE SUPERSTORES ARE MANUFACTURED. AS INITIATED BY POWER BUYERS AND IMITATED BY OTHERS IN THE CHAIN, THIS PRACTICE SIGNIFICANTLY IMPAIRS AND DESTROYS THE ABILITY OF SMALLER COMPANIES TO COMPETE BY REDUCING THE USE OF INDEPENDENT REPRESENTATIVES AS A SALES FORCE.

IN THE LONG RUN COMPETITION IS STIFLED AND THE PRACTICE GREATLY ELIMINATES CHOICES AT ALL CONSUMER LEVELS.

SUPERSTORES OR SUPER BUYERS CONVEY THE IMPRESSION THAT THEIR ECONOMIES OF SCALE MAKE IT POSSIBLE FOR THEM TO UNDERSELL SMALL LOCAL COMPETITORS. THE SAVINGS WHICH ARE A RESULT OF THEIR BIGNESS AND COERCIVE ACTS ARE IN OUR OPINION USUALLY IN DIRECT VIOLATION OF SECTION 2a AND 2c OF THE ROBINSON-PATMAN ACT. AT LEAST A HALF DOZEN TIMES IN THE LAST 15 YEARS THIS COUNTRY'S LARGEST RETAILERS HAVE ANNOUNCED THAT THEY WOULD DO BUSINESS ONLY WITH SUPPLIERS THAT DO NOT USE INDEPENDENT AGENTS. MANY OTHER RETAILERS AS WELL AS MANUFACTURERS FOLLOWED SUIT AND WHEN THIS POLICY WAS IMITATED BY BUYERS, BOTH LARGE AND SMALL, IT HAS HAD A DEVASTATING EFFECT ON SMALL BUSINESSES WHO DEPEND ON INDEPENDENT REPRESENTATIVES AS WELL AS THIS COUNTRY'S HUNDREDS OF THOUSANDS OF AGENTS INVOLVED IN SELLING THEIR PRODUCTS. OUR MEMBERSHIP OF AGENCIES RANGE FROM ONE-PERSON OPERATIONS TO AGENCIES EMPLOYING DOZENS OF PEOPLE. AS ALLUDED TO EARLIER THEY NOT ONLY EXEMPLIFY THE ENTREPRENEURIAL SPIRIT OF OUR COUNTRY, BUT THEY ARE WHAT EVERYONE WOULD DEFINE AS A TYPICAL SMALL BUSINESS. BUT DON'T LET THE WORD SMALL GIVE YOU THE WRONG IMPRESSION. MANY SALES AGENCIES HAVE SALES VOLUME IN THE TENS OF MILLIONS OF DOLLARS.

CONTRAST THIS WITH THE COMPANIES WHOSE PRODUCTS ARE SOLD BY A DIRECT SALES FORCE OF SALARIED PEOPLE. THIS TYPE OF MARKETING MUST INCLUDE IN THE COST OF THEIR PRODUCT THE FIXED OVERHEAD OF SALARIES AND EXPENSES. THE SALARIED SALESPERSON'S SALARY AND ATTENDANT EXPENSES CONTINUE ON WHETHER OR NOT SALES ARE MADE -- AN AGENT OR COMMISSIONED REPRESENTATIVE ON THE OTHER HAND IS ONLY PAID WHEN THEY MAKE A SALE.

THE CRITICAL POINT TO KEEP IN MIND IS THAT OUR AMERICAN SYSTEM OF MARKETING, WHICH BEGAN BEFORE THE TURN OF THE CENTURY AND HAS NO PEER GROUP IN THE WORLD, DEMANDS THAT SOMEONE MAKE THE SALE -- SOMEONE MUST DO THE JOB, AND THAT FUNCTION IS PART OF THE COST OF THE PRODUCT, WHETHER YOU ARE MARKETING TOOTHPASTE, APPLE JUICE, ELECTRIC MOTORS OR WHATEVER, THE PRODUCT MUST BE BROUGHT TO THE MARKETPLACE. IT CANNOT AS THESE SUPER BUYERS INTIMATE BE DONE WITH SOPHISTICATED COMPUTER INVENTORY SYSTEMS OR OTHER ELECTRONIC MEANS INTERFACED WITH A SUPPLIER.

OVER THE PAST FEW YEARS THE EMERGENCE AND PROLIFERATION OF THESE SUPERSTORES AND SUPER BUYERS HAS GIVEN THE GENERAL PUBLIC THE IMPRESSION THAT THEIR EFFICIENCIES OF SCALE MAKE IT POSSIBLE FOR THEM TO SELL AT A LOWER PRICE. MOST OF THE MARGIN IN THESE REDUCED PRICES HAVE COME ABOUT BY CUTTING CORNERS AND HOMOGENIZING OUR COUNTRY BY ELIMINATING COMPETITION AND CHOICE. THEIR USE AND ABUSE OF POWER BUYING IS DELETERIOUS TO A FREE ECONOMY. IN OUR PARTICULAR PROFESSION A CORNER HAS BEEN BENT AND ANOTHER CUT BY COERCING SUPPLIERS TO ELIMINATE THEIR INDEPENDENT SALES AGENTS. THE FALSE RATIONALE BEING THAT WHEN AN AGENT OR "REPS" COMMISSION IS NO LONGER PAID, THE PRICE THEY PAY FOR THE PRODUCT WOULD BE REDUCED TO BOTH THE ORIGINAL BUYER AND THEN TO THE CONSUMER.

THIS SIMPLY IS NOT BASED ON FACT! MANUFACTURERS WHO SUCCUMB TO THIS ERRONEOUS THINKING MUST AT SOME POINT RETURN TO SERVICING THESE SUPER BUYERS THROUGH SALARIED COMPANY PEOPLE. OVER A RELATIVELY SHORT PERIOD OF TIME THE SUPPLIER WHO HAS YIELDED TO THE SUPER BUYER'S ILLEGAL AND IMMORAL PRESSURE COMES TO THE REALIZATION THAT COMPETITION IS MAKING

INROADS WITH THESE POWER BUYERS. FINDING THAT SOMEONE MUST REPRESENT THEIR INTERESTS AT THE SUPER BUYER, THEY ARE THEN FORCED TO FACTOR THIS SERVICE OR SALES COST INTO THEIR PRODUCT. MANY FOUND IT WAS A WASH AND FOR MOST, BECAUSE OF THE MULTI-LINE SELLING MENTIONED EARLIER, IT WAS AT A LOSS FOR THEM TO SERVICE THESE ACCOUNTS WITH THE HIGH COST INHERENT IN DIRECT FACTORY PEOPLE.

PERCEIVED VALUE IN THE DISTRIBUTION AND SALES CHANNEL IS THERE AND EARNED WHETHER IT IS A SALARIED FACTORY PERSON OR A COMMISSIONED MANUFACTURERS' AGENT. IT'S WHOSE VALUE IN THE CHANNEL IS MEASURED CORRECTLY THAT SHOULD RECEIVE THE FINAL REWARD. A QUALIFIED MANUFACTURERS' AGENT CAN SERVE THAT NEED EQUALLY WELL OR BETTER TO A SMALL OR LARGE MANUFACTURER, AS WELL AS AT THE LARGE RETAILER, DISTRIBUTOR OR MANUFACTURER. TO EXCLUDE THE SMALL BUSINESSMAN THAT OPPORTUNITY IS NOT THE AMERICAN WAY.

MANAGEMENT GURUS OFTEN TERM THIS PRACTICE VENDOR REDUCTION AND/OR GOING DIRECT. THOSE WHO HAVE AND WILL FALL FOR THIS PLOY OVER A PERIOD OF TIME USUALLY REALIZE THERE "JUST AIN'T NO FREE LUNCH" -- SOMEONE HAS TO PAY, SOMETIME, SOMEWAY, SOMEWHERE, SOMEHOW.

BY ALLOWING THESE ILLEGAL CONSPIRACIES AND VIOLATIONS OF THE ROBINSON-PATMAN ACT TO CONTINUE, WE UNDERMINE THE VERY PRINCIPAL OF FREE TRADE AND CHOICE THAT HAS MADE OUR COUNTRY STRONG. WE LIMIT COMMERCE AND WE LIMIT CHOICE WHICH MAY REDUCE COSTS ON A FEW LOSS LEADER PRODUCTS, BUT WILL IN THE LONG RUN HURT THE CONSUMER BY IMPACTING COMPETITION AND CHOICE. THIS FALLACY OF ACTION ALSO OFFERS THE INHERENT

DANGER OF HANDING OVER CONTROL OF MARKETING, SERVICING AND DISTRIBUTION DECISIONS TO A RELATIVELY SMALL SEGMENT OF OUR ECONOMY.

THE SERVICES OF ANYONE IN A FREE ENTERPRISE MARKET ARE NOT REDUNDANT -- COMPETITION ALONE WILL ELIMINATE REDUNDANCY, NOT POWER BUYERS OR LARGE DISCOUNT SUPERSTORES. THIS PRINCIPAL IS THE CORNERSTONE OF OUR DEMOCRATIC FREE ENTERPRISE SYSTEM.

TO ALLOW THE SUPER BUYERS TO CONTINUE THESE TACTICS WILL DRY UP COMPETITION AND ALLOW THE POWER BUYERS TO [illegible] COMPETITION AT BOTH THE SMALL LOCAL MANUFACTURER AND RETAILER. THE PRICES THEN BECOME ILLUSORY AND NOT ONLY IS THE BUYER SQUEEZED WITH HIGHER PRICES, BUT THE MANUFACTURER IS STUCK WITH A LOWER SELLING PRICE AND DECLINE IN HIS PROFITS, THE INDEPENDENT AGENT IS FORCED OUT OF THE LOOP, THE LOCAL DISTRIBUTOR IS CUT, THE LOCAL SMALL RETAILERS FOLD UP AND AS A RESULT EVERYONE IN THE CHAIN SUFFERS INCLUDING THE CONSUMER.

COMPETITION IS AT THE VERY FOUNDATION AND STRENGTH OF OUR ECONOMY. THIS COUNTRY'S FUTURE GROWTH AS MOST OF US HAVE LEARNED IS IN SMALL BUSINESS. THE ACTIVITY OF THESE SUPERSTORES AND POWER BUYERS FROM WAL-MART AND GENERAL ELECTRIC ON DOWN TO THE SMALL MANUFACTURER WHO HAVE ATTEMPTED TO IMITATE THEIR BIG BROTHERS RESULTS IN UNFAIR PRACTICE AND COMPETITION THAT IS TO SAY THE LEAST PREDATORY. EARLY IN 1992 OUR ASSOCIATION IN BEHALF OF THE ENTIRE COMMUNITY OF MANUFACTURERS' AGENTS SOUGHT AN AUDIENCE WITH ONE OF THESE POWER BUYERS. THEIR REFUSAL TO ANSWER OUR PLEA FORCED US TO FILE A COMPLAINT WITH THE FEDERAL TRADE COMMISSION. LEGAL ACTION HAS ALSO BEEN SUCCESSFULLY TAKEN, INDIVIDUALLY AND

COLLECTIVELY AGAINST SUCH UNFAIR PREDATORY PRACTICES. IT IS MORE THAN A MORAL ISSUE OF HURTING MY CONSTITUENTS AND THE OTHER "LITTLE" GUYS INVOLVED. IT IS AN ACTIVITY THAT WARRANTS ENFORCEMENT OF PRESENT LEGISLATION BY THE JUSTICE DEPARTMENT AND A BROAD AND COMPLETE INVESTIGATION BY YOUR AUGUST BODY. SPEAKING IN BEHALF OF THE **MANUFACTURERS' AGENTS NATIONAL ASSOCIATION** AND THE **SMALL BUSINESS LEGISLATIVE COUNCIL** OF WHICH WE ARE MEMBERS AND FOUNDING FATHERS, WE OFFER YOU OUR THOROUGH COOPERATION.

THANK YOU ALL FOR THE OPPORTUNITY TO PRESENT THE VIEWS NOT ONLY OF OUR MEMBERSHIP, BUT OF ALL MANUFACTURERS' REPRESENTATIVES AND SMALL BUSINESSES THROUGHOUT THE COUNTRY WHO UTILIZE THEIR SERVICES IN GOING TO MARKET.

TESTIMONY OF JEFFREY L. FIEDLER
SECRETARY-TREASURER, FOOD AND ALLIED SERVICE TRADES DEPT., AFL-CIO

BEFORE THE HOUSE COMMITTEE ON SMALL BUSINESS

AUGUST 10, 9994

Mr. Chairman, my name is Jeffrey Fiedler, and I am Secretary-Treasurer of the Food and Allied Service Trades Department of the AFL-CIO, which represents some 3.5 million members of sixteen unions who live, work and shop in every state in America.

I would like to thank the Committee for inviting me to testify about the impact of discount merchandisers.

Members of our affiliates have, as trade unionists, citizens, consumers, and residents of small towns, been involved in efforts opposing the construction of new discount stores. Their reasons for acting are varied.

I will offer the Committee a number of observations borne from our members' experience and their study as well as some of our own efforts in researching the operations of Kmart and Wal-Mart, the two discounters we have focused the greatest attention on.

Both companies, but Wal-Mart most particularly, until recent years confined most of their growth to rural areas, where their enormous financial resources and distribution systems could, without the slightest difficulty overwhelm even the most efficient and cost effective small business person.

A few studies have been done to measure the impact these discounters have on the local economy, most notably the one done some years ago by Kenneth Stone in Iowa. In our research we have come across other informal efforts like the list maintained by a small businessman in Missouri of 250 stores which have gone out of business because, he maintains, of Wal-Mart. He calls them "Wal-Martyrs", victims of the now infamous Wal-Mart employees chant "Stack it deep, sell it cheap, stack it high and watch it fly! Hear those downtown merchants cry."

The studies show that Wal-Mart and Kmart coming into a town will draw thousands more customers to businesses in that particular town, although many who sell the same items as the discounter will go out of business. The story of surrounding towns is quite different.

In rural and semi-rural areas the discounter draws customers from up to 50 miles away, devastating the small businesses in those towns without any ancillary benefit. Enough business is drained away from those businesses to make them unprofitable, forcing them to close and giving consumers in those towns little choice but to drive long distances to the Kmart or Wal-Mart. Jobs are lost.

Let me address the jobs myth -- the myth that the discounter creates new jobs. A typical discount store employs from 300 to 500 people depending on the size of the store and the ratio of full to part-time employment. At best, the jobs situation is a wash. As many jobs are destroyed as are created. The small business person is put out of work, as are his or her three to fifteen employees. The multiplier effect quickly takes hold and other small businesses which are dependent on the retail traffic in the town cut back, the local distributor of goods, the truckers, the loaders, dozens of others are hurt -- either their jobs are eliminated or economic pressures forced reductions in wages.

At the discounter itself most of the jobs "created" are at minimum wage or slightly above. Definitions of full-time undergo immediate change. To you and me full-time generally means 40 hours a week. But at Wal-Mart, for instance, full-time is 28 hours, and part-time is commonly 10 hours a week. People take these jobs because they have little or no choice. Better some income than none at all.

As non-union companies both Wal-Mart and Kmart succeed in driving out of business other companies through wage competition. In short, they create enormous pressures on both union and non-union companies to cut wages in order to succeed. We do not believe that this contributes to the overall well-being of the community since workers have less disposable income with which to patronize community-based businesses.

As non-union companies both Wal-Mart and Kmart succeed in driving other companies out of business through wage competition. In short, they create enormous pressures on both union and non-union companies to cut wages in order to succeed. We do not believe that this contributes to the overall well-being of the community since workers have less disposable income with which to patronize community-based businesses.

Another myth, one which surrounds Wal-Mart specifically, concerns profit sharing. It goes like this. Work for Wal-Mart long enough, even in a low-paying job and when you retire you'll be rich off of the stock in your profit sharing plan. This may be true for some of the folks who went to work for the company in the 1960's but it is not likely to happen for those hired in the last decade.

Wal-Mart stock, the bulk of the profit sharing plan, has fallen in value nearly 26% in the last 18 months. I am reminded of a similar myth which was touted in the 1940's and 50's -- Sears and Roebuck. Thousands of workers learned the hard way that retirement income security dependent on the price of a single stock is another definition for insecurity.

These huge companies -- Wal-Mart with yearly revenue in 1993 of $67 billion and Kmart with $34 billion -- do not provide health care coverage for a majority of their workers. A study by the United Food and Commercial Workers estimates Wal-Mart insures no more than 43% of their nearly 500,000 workers, and Kmart a paltry 32% of their 350,000. The coverage, especially for low-wage discount workers is onerous. Wal-Mart employees pay an estimated 36% of the premiums and Kmart workers 32%. The national average is around 20%.

The coverage itself creates additional problems for these workers because the deductibles and out-of-pocket expenses are huge. A worker with single coverage under the Wal-mart plan has deductibles ranging from $750 to $3,000 yearly. Out-of-pocket medical expenses under their family coverage range from $3,750 to $10,000.

The UFCW estimates that Wal-Mart and Kmart shifted nearly $1 billion in health care expenses to other employers in 1993 alone. Given the staggering problems facing health care institutions in rural America, and discounter presence there, the severity of this cost shifting is extreme.

Pricing is another myth. Certainly the discounters have enormous economy of scale advantages over small businesses. It is their objective to cut out middlemen -- wholesale distributors and manufacturers' representatives -- and thus reduce prices. They have excellent distribution systems, computerized inventories, and the advantage of size in negotiating special deals with manufacturers. They also, in our experience, import much more of their products from places like China than do small businesses.

But much to our surprise we have learned that they price many of their products nationally, especially the growing percentage of the inventory which is private label products. Private label clothing at Wal-Mart, for instance, is priced the same in rural Mississippi as it is in suburban Chicago. People's incomes are clearly less in Mississippi. In effect, rural shoppers are subsidizing the prices in suburban areas. The competitive effect on rural small business people is considerable.

This came to our attention when we were investigating Wal-Mart's use of child labor in Bangladesh. The little girls in the Sharaka garment factory in Dacca were putting bar code labels with preprinted prices on the shirts.

The discounters are not particularly well-known as model employers in their day-to-day employment practices. They certainly do not create, despite their propaganda to the contrary, the family atmosphere of the small business employer.

Kmart, for instance, during an organizing drive by the Teamsters at a distribution center in Illinois, was found to have hired private detectives as "workers" to spy on other real workers' efforts to form a union. The detailed reports from these spies were sent anonymously to the union. They make truly sickening reading.

Wal-Mart has invasive no fraternization policies making social contact with other employees without management approval a termination offense. Violation of these policies has resulted in many unjust firings according to news reports. Just recently, the UFCW filed an unfair labor practice charge against the company for firing a worker in Massachusetts who was attempting to organize other workers.

Our experience in talking with hundreds of workers of these chains is that they have a tremendous fear of their employer. Similar fears are not common among employees of small businesses.

Mr. Chairman, the public policy question facing this body is whether or not federally subsidized development funds, both direct subsidizes and tax-exempt financing, ought to be made available to these economic giants.

It is fairly common that the discounters, in conjunction with local developers make frequent use of industrial revenue bond financing, and redevelopment financing when building stores. We are talking about hundreds of millions of dollars. There is nothing illegal about this, but there are serious questions whether in this era of deficits it is necessary to subsidize the growth of large companies at the expense of smaller ones.

In almost every instance the discounter has every intention of expanding its operation even if tax-exempt financing is unavailable. But what they do is play one town against another and seek the most assistance they can get to lower their costs. The towns want to be the core site, knowing full well they will suffer the effects of the store being located elsewhere.

Some years ago, the Congress outlawed IRB financing for establishments such as McDonald's. Similar consideration should be given to doing so for development projects involving discounters. While local governments and their planning and zoning boards, rightfully have jurisdiction over development issues, and local residents can make their opposition known, the Congress has a responsibility to examine whether or not federal policy is encouraging the destruction of small businesses through federal laws and regulations which provide unnecessary financing for companies like Wal-Mart and Kmart.

Thank you.

The Impact of Superstores on Small Business - A Case Study of Wal-Mart

Testimony by Thomas Muller at Hearings
of Committee on Small Business
House of Representatives

August 10, 1994

The Impact of Superstores on Small Business - A Case Study of Wal-Mart

The proliferation of retail "Mega stores" have raised concerns within the small business community that their economic viability may be threatened by the presence of these establishments. Three categories of "Mega" stores can be identified: "wholesale" clubs such as Sam's (owned by Wal-Mart) and Price Club, general merchandisers including Wal-Mart and K-Mart, and specialty stores such as Circuit City. My comments will focus on Wal-Mart Stores Inc. because it is the largest and fastest growing mega-chain in the world. Net sales for the company rose from $4.7 billion in 1974 to over $67 billion in 1994. Currently, there are over 2,000 Wal-Mart outlets and 420 Sam's Clubs across the nation.

The company has captured a larger share of general merchandise sales than any of its competitors. Planned expansion over the next few years is expected to give the firm an unprecedented share of all retail sales.

Wal-Mart is also the dominant enterprise in these comments because its size, profitability, and growth rate make the organization the recognized leader in its field. Therefore, Wal-Mart serves as a model, and other stores can be expected to emulate its innovative business strategies including the following:

(1) One Stop Shopping. A general merchandise Wal-Mart is paired with a full-line grocery super market, open 24 hours a day. This results in sales of over $50 million equal to about 100 typical smaller retail stores.

(2) Wholesale Club-General Merchandise Combination. By pairing Sam's and Wal-Mart across each other using the same parking lot, bulk and regular sales can be captured. This results in 200,000 square feet of space and sales in the $70-$85 million range.

(3) Carpeting. The location of stores in close proximity of each other to maximize penetration in urban and

rural areas.

(4) Variable Pricing. Prices for some items vary even in stores located within 30-40 miles of each other in small communities.

(5) Specialized Services. Most Wal-Marts have pharmacies, fast-food outlets and other non-general merchandise goods and services.

Wal-Mart's National Performance and Expansion Strategies

The best means to estimate Wal-Mart impact is to examine Wal-Mart sales activity across the United States. Because Wal-Mart is one of the most centralized operations in the nation, average sales per square foot are more likely to approximate individual outlets than most chain store operations. Unlike many other retail outlets, Wal-Mart stores always appear to capture a profitable share of the market. In fact, Wal-Mart has already captured a substantial share of all DSTM retail sales in smaller cities.

Total retail sales in 1992 in DSTM (Department Store Type Merchandise) nationally were about $450 billion. This means that Wal-Mart is capturing over 10% of all U.S. retail DSTM sales. But because most Wal-Mart stores are concentrated outside large metropolitan areas, their percentage of DSTM sales is probably closer to 15 percent in small city and rural markets. The success of Wal-Mart stores can be illustrated by the fact that Wal-Mart closed only four of its 1953 stores last year.

The market share of Wal-Mart in the less urbanised states may well be unprecedented. For example, Wal-Mart sales in Mississippi during 1992 are estimated (based on data tabulated from the company's annual report) to have been $1.2 billion. Total DSTM sales in the state during 1992 are estimated to have been about $3.9 billion. Given that $900 million of Wal-Mart sales are in the DSTM category, Wal-Mart has captured 23 percent of all such sales in the state. If one includes

Sam's, Wal-Mart has captured over one quarter of the state's DSTM purchases. In Arkansas, another predominately rural state, Wal-Mart sales are estimated to be $11.6 billion, with total DSTM sales at $4.0 billion. Thus, Wal-mart has captured $1.2 of $4.0 billion, or 30 percent of all DSTM sales. Including Sam's, the total approaches one third of the market.

In 1993, there was a Wal-Mart Inc. store for every 110,000 persons in the United States.[1] However, this total includes Northeastern states, which have been targeted by Wal-Mart only in recent years and high density cities such as New York. Southern states, where Wal-Mart has been established longer, has as few as 28,000 persons per store. (See Table 1)

[1]Each Sam's, based on their respective sales, is counted as equivalent to two Wal-Marts.

TABLE 1
WAL-MART MARKET PENETRATION: STORES PER CAPITA

State	Population (In 000)	No. Wal-Mart Inc.[a] Stores 1992[a]	No. Wal-Mart Inc.[a] Stores 1993[a]	Wal-Mart[b] Only 1993[b]	Population Per Wal-Mart Store 1992[a]	Population Per Wal-Mart Store 1993[b/c]
Arkansas	2,361	85	85	77[c]	27,776	30,662
Mississippi	2,573	63	63	57[c]	40,841	45,141
Oklahoma	3,148	93	93	81[c]	33,828	38,940
Tennessee	4,877	100	102	86[c]	47,814	56,203
Alabama	4,041	88	90	74[c]	44,900	58,608
Georgia	6,450	101	111	83	58,108	77,711
Wyoming	460	9	13	9	35,385	51,111
Louisiana	4,287	92	92	74	49,595	57,932
N. Carolina	6,843	90	103	79	62,942	86,620
N. Dakota	636	12	12	8	53,000	79,500
S. Dakota	711	10	10	8	71,100	88,875

[a] Each Sam's is counted as two general merchandise Wal-Mart stores based on relative sales.
[b] Including Sam's.
[c] Excludes super store conversions.

The growth of Wal-Mart in New England states, the most recent "target" of the Corporation, can be observed in Table 2 below:

TABLE 2
NUMBER OF WAL-MART STORES IN THE NORTHEAST

	1992	1993	Percent Change
Maine	10	20	100%
New Hampshire	11	19	73%
New York	22	56	154%

The data in Table 1 suggest that Wal-Mart has reached optimum penetration levels in Arkansas, Mississippi and Oklahoma. Their apparent current strategy, based on the location of new stores, is to saturate urban and rural areas in other states (except within large central cities) to the

approximate level of these states. This would mean approximately 5,000 Wal-Mart stores within the next 10-15 years. The new Wal-mart approach for areas close to saturation (as well as others) is to revamp the older stores as "super centers". These combine the general merchandise store with a full-line grocery store, using the same check-out counters. This allows one-step shopping, and practically all super centers are opened 24 hours a day. The experience of Wal-Mart has been that these super stores have increased per square foot general merchandises sales. With its super stores, Wal-Mart sales could easily double, even in states where current stores are close to saturation. In a few years, given current trends continue, one corporate entity may have a substantial share of all retail trade in the United States. It is not possible at present to predict if the strategy can be fully implemented. Nonetheless, were these plans to succeed, a considerably greater number of small businesses will be adversely effected in future years than is currently evident.

The recent expansion in upstate New York, a region with minimal economic growth, is particularly impressive.[2] A few years ago, there were essentially no Wal-Marts in the region. As of 1993, there were 28 Wal-Mart and 14 Sam's. Because the economy of the region is not growing or growing slowly, virtually all sales represent losses to existing merchants. Although there may have been some inflow of Canadian shoppers near the New York/Canadian border in the past, Wal-Mart is now in Canada, essentially eliminating this sales source.

Implications for Small Business

The typical new Wal-Mart has about 100,000 square feet of retail space and sales (in 1993) of $297 per square foot, an annual square foot sales rise of 8.6 percent between January

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[2]This represents a 159% gain between 1992 and 1993.

1991 and January 1994. Therefore, each new Wal-Mart has average sales of $30 million. This is a far greater average per square foot or per store than any of the other discount chains such as K-Mart. A proposed Wal-Mart in St. Albans, Vermont would have sales equivalent to 60 or more average existing stores in the immediate area. Although national statistics have not been calculated, the ratio appears reasonable for smaller urban areas in other states.

The evolution of the Wal-Mart "super center" means that its new stores, with about 175,000 or more square feet of space, well be equal to over 100 typical small businesses.

Our analysis show that most, but not all small businesses lose sales to Wal-Mart. Among exceptions are fast-food outlets, video rentals and other specialty stores carrying items not available at Wal-Mart. Unfortunately, as Wal-Mart stores grow in size and sales (average square footage per store has grown from 53,000 sq. ft. in 1984 to 84,000 in 1994), they are carrying more categories of merchandise. Newer Wal-Marts have their own fast-food areas, photography facilities and other specialty departments. Therefore, more categories of small businesses will be hurt by Wal-Mart in future years.

The pricing policies of the corporation also present a problem to small businesses. Prices for similar merchandise vary among stores only a few miles apart, and are presumably based on the level of local competition. The corporate policy states that "Wal-Mart stores maintain uniform prices, except where lower prices are necessary to meet local competition'. In effect, this means that consumers in smaller areas where there are no competitors or where competition has been eliminated, pay higher prices than elsewhere.

More generally, the ability of Wal-Mart to purchase directly from the manufacturer places small businesses at a substantial disadvantage. Although Wal-Mart claims that higher service levels provided by small businesses can

overcome the advantage of buying at lower prices than a smaller store, the fact is that substantial differences in price cannot usually be overcome. Nor can a smaller store afford to be open 24 hours a day.

In addition to these advantages, Wal-Mart has massive staying power. With over 2000 stores and several billion in annual profits, Wal-Mart can subsidize a store with poor performance by lowering prices until its competitors can no longer stay in business.

Other Research

Kenneth E. Stone at Iowa State University has undertaken studies of how Wal-Mart impacts local communities. His 1989 analysis of Iowa communities with and without Wal-Mart stores reached several conclusions. The study found that competing general merchandise stores where Wal-Mart opened suffered the greatest losses, while specialty stores, service firms and apparel stores showed significant sales reductions. Concurrently, the study found that restaurants and building supply firms benefited from the additional traffic generated by Wal-Mart. Non Wal-Mart stores of similar size also showed losses in the same categories and these losses were partially attributable to Wal-Mart. Finally, the smallest towns experienced the most severe sales losses.

These findings are consistent with our analyses. However, when Wal-Mart are spatially close to each other, we find that most sales come from merchants located in the same community or county as Wal-Mart. These findings should not be surprising. Wal-Mart and other Mega stores do not increase the dollar volume of sales, but redistribute such sales.

The Downtown Business District and Mega-Stores

Downtown merchants have been under pressure for over two decades as competitors located along highways on the periphery of the urban core. Prior to the rise of the "Mega" stores, a

partial equilibrium was reached. Although downtown sales shrunk considerably and most traditional department stores left for shopping malls, a core of small businesses remained in most communities. New Mega-stores such as Wal-Mart pose an additional threat to the economic viability of small business located within cities and towns. Downtown areas could often compete with shopping malls because prices remained competitive. The cost of renting space in malls remains high, allowing some small merchants in downtown areas to successfully compete. However, pricing policies, particularly at Wal-Mart, and the scope of merchandise sold increases the problems small businesses faces in traditional downtown business centers.

At several hearings in Vermont, Wal-Mart countered the concern over small business losses by arguing that Wal-Mart captures sales from other markets, therefore partially mitigating adverse impacts. However, once Wal-Mart stores in a region reach a saturation level, it is no longer possible to "rob Peter to pay Paul". Any "recapture" of sales from outside the primary market is unrealistic when there are Wal-Marts in every direction.

As for secondary retail-induced retail economic activity in cities and towns, wholesale functions and related jobs are essentially eliminated by Wal-Mart, and centralized operations reduce local commercial transactions such as hauling, banking and advertising.

Wal-Mart and Retail Jobs

Wal-Mart has become one of the leading employers in the nation, with over half a million workers, a seven-fold rise in a decade. However, it would be a serious mistake to conclude that these jobs are net additions to the work force. The presence of Wal-Mart results in fewer retail jobs than would be available in their absence. This is attributable to the fact that sales per employee at Wal-Mart are substantially

above the industry average. As shown in Table 3, sales per employee in all Wal-Mart operations including workers in distribution centers, central offices were $127,000, a rise of 27 percent (adjusted for inflation) in a decade.

TABLE 3

WAL-MART INC. SALES PER EMPLOYEE

Year	No[a]	Sales [b]	Sales Per Employees
1983	62,000	$6.2 b	$100,000
1988	223,000	25.3 b	113,453
1993	528,000	67.3 b	127.462
% Change	751.6%	1085.5%	27.5%

[a] Includes all employers, including workers in central officers and distribution centers. Sales per workers in retail stores (Wal-Mart and Sams) are estimated at about $135,000 in 1993.

[b] Adjusted by CPI commodity index.

Mega Stores and Small Business Enterprises - Future Directions

Wal-Mart has aroused more concern among small business enterprise than any other chain store operation. Given the size of the organization, current and projected expansion rates, the ability to dominate producers of goods, and considering their sales volume, this apprehension should not be surprising. As indicated by in the *Washington Post* banner headline two weeks ago (July 27, 1994) Wal-Mart Encounters a Wall of Resistance in Vermont, the company is facing considerable and very vocal opposition, particularly in New England states where local residents are anxious to preserve the character of their communities. Although Wal-Mart consultants assert that they will not hurt small business, available evidence and common sense contradict such claims.

Because retail sales are a stable percentage of income, most Wal-Mart sales can only represent a shift from other stores.

This is not to argue that such competition should be restricted. Fair competition benefits consumers. Nor do these comments pertain only to Wal-Mart. Any other corporation that holds a large market share requires scrutiny. The concern is that when one company gains a high market share, a virtual monopoly can exist in smaller communities which could stifle future competition and dictate to producers, large and small.

Unfortunately, most small business enterprises and citizen groups laok the financial means to challenge a multi-billion dollar corporations with essentially unlimited resources. This Congressional Committee remains one of the few institutions which can protect small businesses and consumers from potentially questionable practices or monopolistic tendencies. The Committee also has a role in assuring the public that all business enterprises, large or small, have the opportunity to compete fairly and equitably.

Thomas Muller is an economist and author of several studies examining the effects of large commercial development on CBDs (downtown business districts) and small business enterprises. These studies were prepared at the Urban Institute where he was a Principal Research Associate and co-director of the Land Use Center. Dr. Muller recently completed, with Ms. Beth Humstone, studies on the potential impact of three proposed Wal-Mart stores on communities in Northeastern Vermont. He is a consultant to numerous local governments and has testified frequently on economic issues at hearings in the House of Representatives and the U.S. Senate.

Hearing to Examine
"The Impact of Discount Superstores on Small
Business and Local Communities"

Before the

House Small Business Committee

U.S. House of Representatives
103rd Congress, 2nd Session
Hearing on August 10, 1994
Washington, D.C.

STATEMENT OF JOHN M. RECTOR

BEFORE THE HOUSE SMALL BUSINESS COMMITTEE

August 10, 1994

Mr. Chairman, Members of the Committee:

I am John M. Rector. I serve as Senior Vice President of Government Affairs and General Counsel for the National Association of Retail Druggists.

The National Association of Retail Druggists (NARD) represents more than 39,000 independent pharmacies, where over 75,000 pharmacists dispense more than 70% of the nation's prescription drugs and related services. Independent pharmacists serve 18 million persons daily and provide 85% of the Medicaid pharmaceutical services. More than 60% of our members are currently involved in providing home health care. NARD has long been acknowledged as the sole advocate for this vital component of the free enterprise system. We are the only national pharmacy association with universal state association membership, including those of the Committee's members.

NARD members are primarily family businesses. They have roots in America's communities. The neighborhood independent druggist typifies the reliability, stability, yet adventuresomeness, that has made our country great. Our members have been rated by the American consumer in the last five consecutive Gallup Polls as the most trustworthy persons in any of the professions. [See Exhibits 1 and 2]

Competition amongst retail pharmacies is alive and well. Competition is an incentive for efficiency and the price competition in retail pharmacy is greater than can be found among the other providers of health services. On the average, our members obtain a 2% pre-tax net profit.

As owners, managers and employees of independent pharmacies, our members are committed to legislative and regulatory initiatives designed to protect the public and to provide them a level playing field and a fair chance to compete. We appreciate the opportunity to appear before the Committee to assist in your assessment of the "Impact of Discount Superstores on Small Business and Local Communities".

This morning we have been asked to address the predatory pricing practices of Wal-Mart as evidenced by the American Drugs, Inc. vs. Wal-Mart Stores, Inc. in Conway, Arkansas and other cases.

"It WAS A THUNDERBOLT FROM SMALL-TOWN AMERICA"
(CBS-TV Evening News)

Approximately twenty states have enacted predatory pricing laws. These statutes are usually entitled "below-cost sales" laws. The Arkansas Unfair Practices Act (Ark. Code Ann. Sec.4-75-201, et.seq.) and its predatory pricing provisions (Sec.4-75-209(a)(1) are typical of these laws:

> It shall be unlawful for any person, partnership, firm, corporation, joint-stocked company, or other association engaged in business within this state, to sell, offer for sale, or advertise for sale any article or product, or service or

> output of a service trade, at less than the cost thereof to the vendor, or to give, or advertise the intent to give away any article or product, or service or output of a service trade, for the purpose of injuring competitors and destroying competition.

In late 1991, three independent pharmacists - NARD members - in Conway, Arkansas filed suit against Wal-Mart for violating the state's Unfair Practices Act. C.Dwayne Goode of American Drugs, Inc., Tim Benton of Mayflower Family Pharmacy and Jim Hendrickson of Baker Drug Store stated that Wal-Mart was selling items below cost. They sought a total of $1.1 million in actual and punitive damages.

The conflict emanated from Wal-Mart advertising and selling Tagamet, Dyazide, Efferdent, Listerine, Mylanta, Oil of Olay and Crest toothpaste at prices below cost. The suit alleged Wal-Mart executed these acts "with intent to deceive purchasers, to substantially lessen competition, to unreasonably restrain trade, and to injure competitors.

On October 11, 1993, Arkansas Chancery Court Judge, David Reynolds, ruled that the company did engage in "predatory pricing" -- purposely pricing products below cost with the intent of driving small retailers out of business. Judge David Reynolds awarded the three independent pharmacists $289,407 in damages after ruling that Wal-Mart engaged in "predatory pricing" practices to undercut its competitors. Judge Reynolds ruled that Wal-Mart sold prescription items such as Tagamet, Dilantin, and Dyazide and nonprescription items such as Mylanta, Oil of Olay, and Crest toothpaste

below cost in an effort to drive the three Arkansas community pharmacists out of business.

In Arkansas, Goode first became suspicious about Wal-Mart's pricing practices after seeing a newspaper ad in which the chain advertised a gallon of milk for 49 cents. Goode also reported that Wal-Mart's prices were significantly higher in communities where it had eliminated the competition. "In North Little Rock (Arkansas), they charged a little over $11 for baby formula," said Goode, "and in Flippin, Arkansas, which is a rural community where they had eliminated all of their competition, they charge almost $22 for the same item".

Judge Reynolds ordered Wal-Mart to stop selling drugs and health and beauty items below cost at its Conway store in violation of Arkansas's 1937 Unfair Trade Practices Act, which prohibits unfair and discriminatory prices "by which fair and honest competition is destroyed or prevented."

"The purpose of the act is not to protect small business from large business, downtown from malls, or to guarantee any business a share of the market, but to encourage fair and honest competition," said Reynolds. Therefore, "The act makes it unlawful for a business to sell, or advertise for sale, 'any article or product' at less than the 'cost thereof'.

Reynolds explained that a purpose to injure competitors and destroy competition cannot easily be proven by direct evidence, but may be inferred by other circumstances. In Wal-Mart's case, he cited several such circumstances:

- The number and frequency of below-cost sales
- The extent of below-cost sales
- Wal-Mart's stated pricing policy to "meet or beat the competition without regard to cost"
- Wal-Mart's stated purpose of below-cost sales, which is to attract a disproportionate number of customers to Wal-Mart
- The in-store price comparison of products sold by competitors, including Goode, Hendrickson, and Benton
- The disparity in prices between the Conway Wal-Mart and prices in similar-market Wal-Marts

The full text of the decision is enclosed as Exhibit #3.

The court's ruling is a victory not only for our members, the pharmacies that brought the suit, but for small business in general and ultimately for the American consumer. Our Nation's antitrust laws were enacted to foster a competitive marketplace that keeps prices competitive. When hugh businesses such as Wal-Mart are permitted to violate those laws and drive competitors out of business, prices rise and consumers suffer. The case has been appealed to the Arkansas Supreme Court.

Given the documentation of Wal-Mart's systemic predatory pricing policies and practices, we expect extensive litigation in the relevant states.

FTC Derogation of States' Rights

We strongly endorse the effort to carefully monitor the failure of the FTC to take action against predatory pricing practices. The FTC's approach on predatory pricing is especially illustrative of the arrogant and detached manner in which this agency has been operating. Particularly illustrative were the February 4, 1987, comments of FTC Commissioner Terry Calvani to this Committee:

> "Equally rare is 'predatory pricing.' Both the empirical and theoretical literature, as well as the case law, show that below cost pricing to exclude rivals is rare at best. I thus view (....this) reporting provision as akin to requiring expenditure of tax dollars for drafting a report to the Congress on unicorn sightings."

Other commissioners subsequently characterized the problem of predatory pricing as rare as "white tigers" (Azcuenaga) and as "grizzly bears" (Sterio).

In our view, such arrogance by federal officials is nearly without peer.

What is truly as rare as a unicorn sighting are the acts taken by the present FTC to protect small business from predators and to protect the consumer from the predictable consequences of such unfair competition.

Unfortunately, the FTC has taken a pro-active stance with its unicorn-like philosophy. It has challenged state laws aimed at preventing predatory pricing practices. In 1986, the U. S. District Court for the Northern District of Oklahoma turned aside a legal challenge brought by Wal-Mart to the state's unfair sales Act. [See Exhibit #4]

In the Oklahoma action, brought by NARD member John Snider, Wal-Mart was charged with selling prescription and non-prescription items substantially below cost in violation of state law. Wal-Mart, joined by the FTC, in turn challenged the state law.

Early in 1987, Wal-Mart pulled out the big guns in a reported $1 million-plus campaign to repeal the statute., The campaign featured propaganda against what Wal-Mart called the "Mandatory Minimum Markup Bill", charging that the legislation causes higher prices. But the Oklahoma Oil Marketers Association, in a position paper on the bill to repeal the law, said, "Why would the giant, impersonal multi-market chains want this law repealed? They want to increase their market share by driving the small merchants out of business. They aren't concerned with whom this destroys or how it alters and educes a community's retail character."

An editorial in the Tulsa Tribune called Wal-Mart a "national ogre" and a "creeping giant, a billion dollar parasite operating under the guise of protecting consumers from the laws of inflated prices." The editorial pointed to Wal-Mart's predatory pricing policies as the cause of many small-town merchants being driven out of business.

This 1987 bill was defeated 20 to 5 in committee, stopping the Wal-Mart/FTC attempt to set a precedent in Oklahoma that it would use to attempt to repeal similar anti-predatory pricing laws in other states. The best news, in our view, was that Oklahoma lawmakers recognized that consumer protection is of great importance.

The FTC Wal-Mart collaboration not only highlights the agency's failure to protect our members and their consumers from predators, but also stands out as a glaring example of the need to curb improper and unnecessary intervention by the FTC in state proceedings, including those of the state legislatures.

Federal Trade Commission Act Amendment of 1994

The good news is that H.R.2243, reauthorizing the FTC, was approved by the House under suspension on July 25, 1994. H.R.2243 has provisions to help assure that all bonafide reports of predatory pricing made to the FTC are properly handled and has provisions designed to prevent inappropriate FTC interventions in matters pending before state legislatures and state agencies, including those that regulate the practice of pharmacy. We strongly support these provisions and commend the bipartisan efforts by Mr. Dingell, Mr. Swift, Mr. Moorhead and Mr. Oxley. In the Senate, Chairman Hollings and Senator Bryan appear equally committed to act on these key provisions. It is noteworthy that former Representative and former Senator, and now Vice President of the United States, Albert Gore, has worked for nearly a decade to properly address these concerns. [See Exhibit 5]

Related Anticompetitive Activity

Much is said about "discounts," "bulk purchases," "large purchasers" and other normal market concepts and practices. The stark reality is that our market is unlike most. Its hallmarks are discriminatory pricing and cost shifting. These practices predate the

latest excuse for price discrimination - "managed care" - by decades. After a dozen days of hearings on such practices, the House Select Small Business Committee in 1968 noted in its report that:

> "Consumer interests are compromised by permitting drug price discrimination in the area, because the retailers and consumers ultimately must pay higher drug prices as a form of economic subsidy to the drug supplier for the lower prices which that drug supplier charges the institutions".

These discriminatory pricing practices are addressed in Majority Leader Gephardt's health care reform legislation in the "Agreement to Give Equal Access to Discount" provisions. Our opponents in the insurance and pharmaceutical industries and those who benefit from current discriminatory pricing practices have intentionally miscast the equal access to discounts provision as "unitary pricing". We urge you to reject such clear propaganda and review the actual provisions which are as follows:

"Health Security Act"

Sec 2003 MEDICARE REBATES FOR COVERED OUTPATIENT DRUGS

(e) "AGREEMENT TO GIVE EQUAL ACCESS TO DISCOUNTS--An agreement under this subsection by a manufacturer of covered outpatient drug shall guarantee that the manufacturer will offer, to each wholesaler or retailer (or other purchaser representing a group of such wholesalers or retailers) that purchases such drugs on substantially the same terms (including such terms as prompt payment, cash payment, volume purchase, single-site delivery, the use of formularies by purchasers, and any other terms effectively reducing the manufacturer's costs) as any other purchaser (including any institutional purchaser) the same price for such drugs as is offered to such other purchaser. In determining a manufacturer's compliance with the previous sentence, there shall not be taken into account terms offered to the Department of Veterans Affairs, the Department of Defense, or any public program.."

As a consequence of such propaganda, many offices are confused. Typical was the response to one of our members in Wichita, Kansas from a aide to Senate Minority Leader, Robert Dole. The Legislative Assistant initially stated that Senator Dole could not support the equal access provision. When asked why, our member pharmacist was told that "it would be like Wal-Mart having to pay the same for merchandise as little shops do". As you can see from a review of the actual equal access provision, nothing could be further from the truth.

After learning what the provision actually stated, the Legislative Assistant informed our pharmacists member that what he was saying made a "lot of sense" and after discussing the issue with him, that he would discuss the issue with Senator Dole.

The provision in the Gephardt Bill is pro-discount, not anti-discount. It will help assure that large chain drug stores and independent pharmacy buying groups will no longer denied equal access to economies of scale by pharmaceutical manufacturers and distributors. Incidentally, some "mega pharmaceutical firms" will claim that this provision will raise prices. <u>Can you imagine such firms opposing a provision that would increase their revenue and profits?</u> The implementation of this provision would lead to reduced prices for prescription drugs for the overwhelming majority of American consumers, your constituents, who acquire prescription drugs and related pharmacy services from American drug stores. Consequently, enactment of the equal access provision is not surprisingly the top legislative priority of the Community Retail

Pharmacy Health Care Reform Coalition representing 60,000 pharmacies, and 112,000 pharmacists, and employing a total of 1.1 million persons.

CONCLUSION

At the outset of your investigation, it is particularly important to note that consumers and the groups representing them support the full enforcement of state and federal predatory pricing laws. We share these common concerns. It is the Wal-Marts that are "sticking it to the consumers". After all, the reason for predatory pricing laws is to stick with consumers over the long haul.

We look forward to assisting the Committee in your assessment of the Impact of Discount Superstores on Small Business and Local Communities, especially the predatory pricing practices of Wal-Mart.

On behalf of the Executive Committee, and members of the National Association of Retail Druggists, we thank you for the opportunity to appear and to continue participating in your effort to help assure that small businesses are able to operate in a more pro-competitive, pro-consumer environment.

Exhibit #1

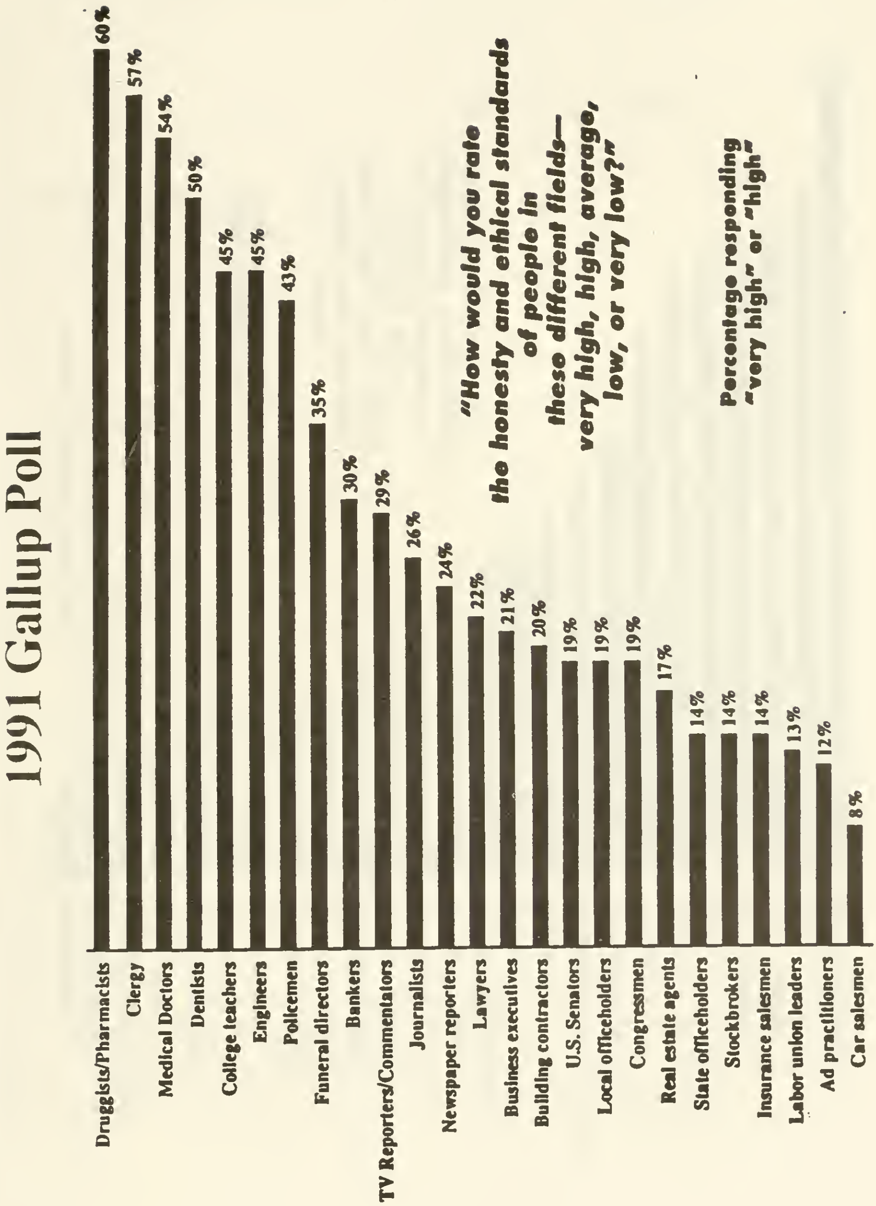
1991 Gallup Poll
"How would you rate the honesty and ethical standards of people in these different fields— very high, high, average, low, or very low?"
Percentage responding "very high" or "high"
Druggists/Pharmacists 60%
Clergy 57%
Medical Doctors 54%
Dentists 50%
College teachers 45%
Engineers 45%
Policemen 43%
Funeral directors 35%
Bankers 30%
TV Reporters/Commentators 29%
Journalists 26%
Newspaper reporters 24%
Lawyers 22%
Business executives 21%
Building contractors 20%
U.S. Senators 19%
Local officeholders 19%
Congressmen 19%
Real estate agents 17%
State officeholders 14%
Stockbrokers 14%
Insurance salesmen 14%
Labor union leaders 13%
Ad practitioners 12%
Car salesmen 8%

Exhibit #2

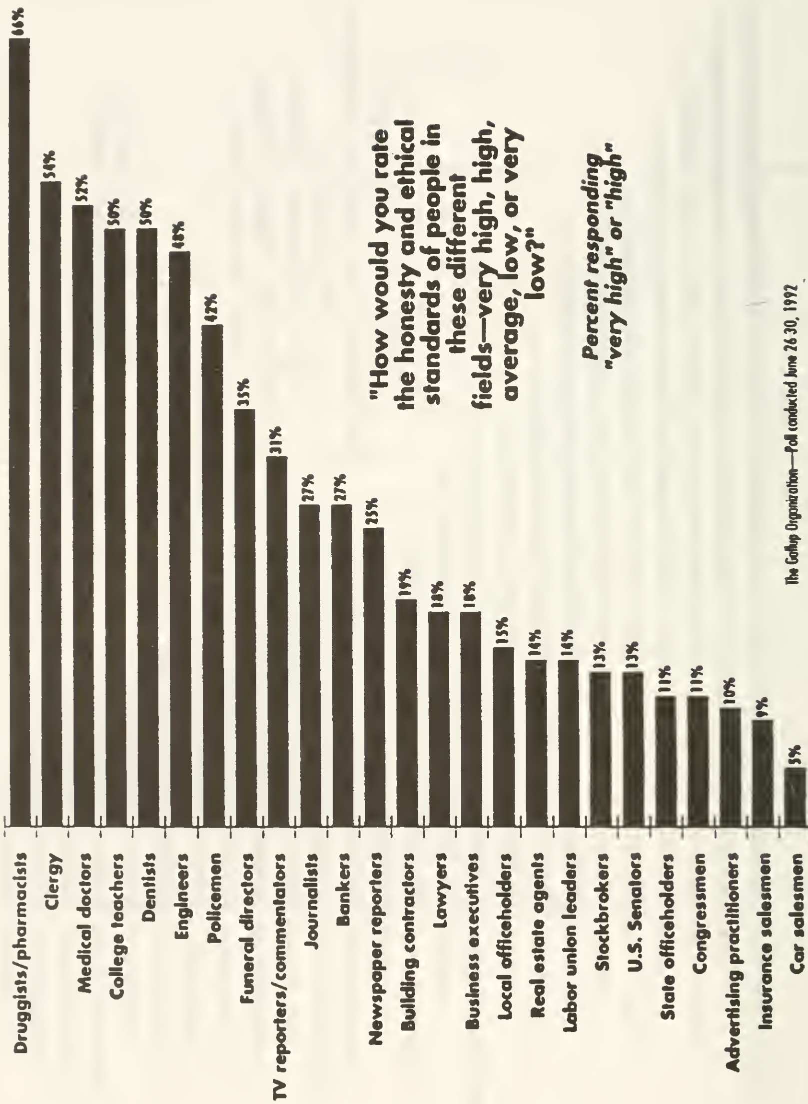
"How would you rate the honesty and ethical standards of people in these different fields—very high, high, average, low, or very low?"
Percent responding "very high" or "high"
Druggists/pharmacists 66%
Clergy 54%
Medical doctors 52%
College teachers 50%
Dentists 50%
Engineers 48%
Policemen 42%
Funeral directors 35%
TV reporters/commentators 31%
Journalists 27%
Bankers 27%
Newspaper reporters 25%
Building contractors 19%
Lawyers 18%
Business executives 18%
Local officeholders 15%
Real estate agents 14%
Labor union leaders 14%
Stockbrokers 13%
U.S. Senators 13%
State officeholders 11%
Congressmen 11%
Advertising practitioners 10%
Insurance salesmen 9%
Car salesmen 5%
The Gallup Organization—Poll conducted June 26-30, 1992

Exhibit #3

IN THE CHANCERY COURT FAULKNER COUNTY, ARKANSAS

FIRST DIVISION

AMERICAN DRUGS, INC., et al. PLAINTIFFS

VS. NO. E-92-1158

WAL-MART STORES, INC. DEFENDANT

FINDINGS OF FACT

Plaintiffs, American Drugs, Inc. ("American Drugs"), Tim Benton d/b/a Mayflower Family Pharmacy ("Family Drug") and Jim Hendrickson d/b/a Baker Drug ("Baker Drug") (collectively the "Plaintiffs"), own and operate drug stores in Faulkner County, Arkansas.

Plaintiffs' drug stores offer for sale a full line of pharmaceutical items and health and beauty aids. Plaintiffs are multiple-line marketers relying on local sales of pharmaceuticals for the majority of their retail sales and income.

Defendant Wal-Mart, Inc, ("Wal-Mart") the world's largest retailer, owns and operates a discount store at Conway, Faulkner County, Arkansas ("Conway Wal-Mart"), which offers a variety of products, including pharmaceuticals and health and beauty aids, but does not rely on pharmaceuticals for a substantial amount of its retail sales. For the purpose of determining competitive impact in this litigation, the relevant market is the pharmaceutical and health and beauty aids product-lines ("relevant product lines") in Faulkner County, Arkansas, where Conway Wal-Mart and Plaintiffs are competitors.

Faulkner County has experienced strong population and commercial growth during the past 20 years. The sale of pharmaceuticals and health and beauty aids has expanded correspondingly. Retail sales in the relevant product-lines increased from $5,184,000 in 1988 to $9,637,000 in 1990. The number of pharma-

ties located in Faulkner County has increased from five in 1967 to twelve in 1981 and fourteen in 1992. Conway Wal-Mart began selling prescription drugs in 1987. Other competitors of Plaintiffs and Defendant in the relevant product lines are other drug stores and large volume chain discount stores in Faulkner County, including Kroger, Harvest Foods and Fred's.

Healthy competition in a market tends to result in lower retail prices; and a competitive marketplace is beneficial to consumers. Prices for the relevant product lines in Conway Wal-Mart tend to be the same or slightly higher than in the Little Rock market area Wal-Mart stores (equal or greater competition than Faulkner County) and substantially lower than in the Clinton, Arkansas or Flippin, Arkansas, Wal-Mart stores (areas of less competition).

Wal-Mart determines the "everyday" price for its products at its headquarters in Bentonville, Arkansas. Local store owners cannot raise their store's prices above the price determined at its headquarters. It is Wal-Mart's policy that its store managers monitor the retail prices charged by competitors in their respective market area and lower prices for highly competitive merchandise without regard to the cost of individual items. This price is frequently below Wal-Mart's cost of acquiring some of these products in highly competitive markets.

After monitoring prices charged by other competitors, the manager of Conway Wal-Mart has reduced the retail prices of some items in its relevant product lines below Wal-Mart's invoice or acquisition cost. Conway Wal-Mart has advertised for sale, in the local market, pharmaceutical items at prices below Wal-mart's acquisition cost. Conway Wal-Mart occasionally has displayed a pricing "scorecard" near the front of the store comparing Conway Wal-Mart's prices on certain merchandise with prices charged by other local retailers, including Plaintiffs.

The stated purpose of Wal-Mart's pricing policy is to "meet or beat" the retail prices contemporaneously charged by competitors

for highly competitive, price-sensitive merchandise; to maintain "low-price leadership" in the local marketplace; and to "attract a disproportionate number of customers into a store to increase traffic." The stated purpose of below cost sales is to generate traffic that will purchase other items offsetting any loss on a particular item sold below cost.

Although Conway Wal-Mart has sold, at prices below its cost, items in the relevant product lines, Conway Wal-Mart sells the whole product line above cost. Conway Wal-Mart and its pharmacy are profitable even in the short run.

There is no direct evidence that the purpose of Wal-Mart's pricing policy or Conway Wal-Mart's implementation of the policy is to injure competitors or to destroy competition. However, such purposes may be inferred from the stated policy, the effects of the stated policy and other circumstantial evidence.

Plaintiffs have lost prescription and related sales and customers to Conway Wal-Mart as a result of Wal-Mart's advertising and sale of the relevant product lines below Wal-Mart's acquisition costs. The growth in sales and profits experienced by Plaintiffs substantially decreased primarily as a result of Wal-Mart's below-cost advertising and pricing in spite of the dramatic increase in sales in the local market.

Plaintiffs have been injured by Conway Wal-Mart's aggressive and unfair pricing practices. American Drug has been damaged in the amount of $42,407.00. Baker Drug has been damaged in the amount of $33,767.00. Family Drug has been damaged in the amount of $20,295.00.

CONCLUSIONS OF LAW

Act 253 of 1937, "The Unfair Trade Practices Act", Ark. Code Ann. §§ 4-75-201 through 4-75-211, ("the Act") specifically sets out the legislative intent of "the Act":

> "The General Assembly declares that the purpose of this subsection is to....foster and encourage competition by prohibiting unfair and discriminatory prices by which fair and honest competition is destroyed or prevented."

The Arkansas Supreme Court recognized "the Act's" purpose in <u>Beam Brothers v. Monsanto</u>, 259 Ark. 253, 532 S.W.2d 175 (1976):

> "This subsection (of the Act) is intended for the primary benefit of the public by protecting dealers, especially small dealers, from unfair competition by large dealers."

The purpose of "the Act" is not to protect small business from large business, downtown from malls, or to guarantee any business a share of the market, but to encourage "fair and honest competition". The protection afforded by "the Act" is from "unfair competition".

"The Act" states that "... it shall be literally construed so that its beneficial purposes may be subserved." "The Act" is penal in nature and imposes liabilities unknown at common law, therefore it must be strictly construed in favor of those upon whom the burden is sought to be imposed, and that which is not expressed will not be taken as intended. <u>Davis v. Fowler</u>, 230 Ark. 39, 320 S.W.2d 938 (1959).

"The Act" makes it unlawful for a business to sell, or advertise for sale "any article or product" at less than the "cost thereof". "Cost" in this instance is defined as the "invoice or replacement cost of the article to the distributor or vendor plus the cost of doing business." "Cost of doing business" is defined as:

> "....all costs of doing business incurred in the conduct of the business and must include without limitation the following items of expense: labor, which includes salaries of the executives and officers, rent, interest on borrowed capital, depreciation, selling cost, maintenance of equipment, delivery cost, credit losses, all types of licenses, taxes, insurance, and advertising". Ark. Code Ann. § 4-75-209 (2)(b)(2).

The prohibition against sales below costs does not apply to the sale below cost of seasonal, damaged, deteriorated and perishable items; good faith closing business sales; and court ordered sales.

Wal-Mart contends that the Court should look at "market-basket" cost rather than single product or article cost. While the Court can find no Arkansas judicial decision construing this issue, the Court finds that Ark. Code Ann. § 4-75-209 is clear - "the Act" applies to "any article or product" and not "market-basket" or "overall product line" cost.

The burden of proof is on Plaintiffs to establish three essential elements: that Conway Wal-Mart sold, offered to sell or advertised to sell products (1) at less than the cost to Conway Wal-Mart, (2) for the purpose of injuring competitors, and (3) for the purpose of destroying competition. Ark. Code Ann. § 4-75-209 (a)(1).

The evidence is clear that Conway Wal-Mart advertised and sold pharmaceutical and health and beauty products below invoice or acquired costs (without taking into consideration the "cost of doing business") on a regular basis. These below cost sales do not fall within the exemptions set out in "thé Act".

The Court finds that purpose to injure competitors and destroy competition cannot be inferred from below cost advertising and sales alone. There must be other proof of intent or purpose. A person's purpose or intent, being a state of mind, ordinarily cannot be proven by direct evidence, but may be inferred from other circumstances. Alford v. State 34 Ark. App 113, 806 S.W.2d 29 1991).

The Court finds from the following circumstances that Conway Wal-Mart advertised and sold pharmaceutical and health and beauty products below cost for the purpose of injuring competitors and destroying competition:

1. The number and frequency of below cost sales.
2. The extent of below costs sales.
3. Wal-Mart's stated pricing policy - "meet or beat the competition without regard to cost".
4. Wal-mart's stated purpose of below cost sales - to attract a disproportionate number of customers to Wal-mart.
5. The in-store price comparison of products sold by competi-

tors, including Plaintiffs.

6. The disparity in prices between Faulkner County prices of the relevant product lines and other markets with more and less competition.

RELIEF AND DAMAGES

Plaintiffs' request to enjoin Conway Wal-Mart from selling below cost as defined by the "Unfair Trade Practices Act" is GRANTED.

Plaintiffs' request for damages is GRANTED and the Court awards damages as follows:

American Drug	$42,407.00
Baker Drug	33,767.00
Family Drug	20,295.00

Plaintiffs' request for treble damages and costs is GRANTED.

Plaintiffs' request for attorney's fees is DENIED due to the lack of statutory authority for such allowance.

IT IS SO ORDERED THIS 11TH DAY OF OCTOBER, 1993.

DAVID L. REYNOLDS
CHANCERY JUDGE ON EXCHANGE

Exhibit #4

OKLAHOMA COURT TURNS ASIDE CHALLENGE

Unfair Sales Act Upheld

The U.S. District Court for the Northern District of Oklahoma has turned aside a major legal challenge to the state's "sales-below-cost" statute. Oklahoma is one of 21 states that have criminal or civil penalties on the books aimed at retailers who are found to be selling goods substantially below-cost—such prices deemed so by state law (see box).

In the Oklahoma litigation, NARD member John E. Snider of Hominy Rexall Drug, alleged that Wal-Mart Pharmacies, Inc. advertised and sold prescription drugs and other nonprescription drug items at less than cost

Wal-Mart's claim that the statute chills competitive pricing is entirely speculative

to the retailer, in violation of the Oklahoma Unfair Sales Act. Wal-Mart is one of the nation's largest retail department and drugstore chains.

Wal-Mart countered that state statute was unconstitutional, claiming that the act is "an impermissible burden on interstate commerce, violates the due process clause, and is preempted by federal antitrust laws." The company's position was joined by an *amicus curiae* brief filed by the Federal Trade Commission.

Judge James O. Ellison decisively rejected the defendant's motion to dismiss the case and noted that the Oklahoma law compared with California Unfair Practices Act—also challenged and successfully defended in the Ninth Circuit—"reveals them to be almost indistinguishable."

As a service to NARD members, the *NARD Journal* is publishing in full the text of the Oklahoma opinion.

In the United States District Court
for the Northern District of Oklahoma
John E. Snider dba Hominy Rexall Drug, et al.,
plaintiffs; vs. Wal-Mart Stores, Inc., dba Wal-Mart
Pharmacy, Pawhuska, OK, defendant.
No. 84-C-436-E.

ORDER

Now on this 31st day of July, 1986 comes on for hearings the above styled case and the court, being fully advised in the premises finds:

Plaintiffs own and operate pharmacies in Osage County. Defendant Wal-Mart also operates a pharmacy in the same area as plaintiffs. Plaintiffs allege that Wal-Mart advertised and sold prescription drugs and other nonprescription drug items at less than "cost to the retailer" in violation of the Oklahoma Unfair Sales Act, Okla. Stat. tit. 15 §§ 598.1-.11 (1981) (the Act). The Court notes twenty-one states have such statutes.

Wal-Mart filed a 12(b)(6) motion to dismiss on the grounds that the Act is unconstitutional. Wal-Mart claims that the Act is an impermissible burden on interstate commerce, violates the due process clause, and is preempted by federal antitrust laws.

Federal Court Upholds State Predatory Pricing Law

The U.S. District Court for the Northern District of Oklahoma has turned aside a major legal challenge to the state's "sales-below-cost" statute. NARD member John Snider, owner of Hominy Rexall Drug, sued Wal-Mart Pharmacies, charging that the chain sold prescription and nonprescription drug items at prices substantially below cost, a violation of state law.

Wal-Mart, joined by the Federal Trade Commission, countered by arguing that the state law was unconstitutional and preempted by federal antitrust laws. But Judge James Ellison rejected Wal-Mart's motion to dismiss the case, thereby upholding the validity of the state's statute against below-cost sales and allowing the case to be brought to trial. NARD provided assistance to Snider's lawyers. Look for details on the case in the September issue of the *NARD Journal*.

I. Commerce Clause

Art. I, § 8, cl. 3 of the United States Constitution gives Congress the power to regulate interstate commerce. While the clause serves as a limitation upon the power of states to regulate commerce. *Great Atlantic & Pacific Tea Co., Inc. v. Cottrell*, 424 U.S. 366, 370-71 (1976), Congress has not totally occupied the field. State statutes will be upheld if they do not *directly* regulate interstate commerce, and if the statute effectuates a public interest in a manner which is only *incidental*. See *Shafer v. Farmer's Grain Co. of Embden*, 268 U.S. 189, 199 (1925); and *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970). Wal-Mart argues that the Act is a direct regulation because it interferes with its pricing and advertising programs. Second, Wal-Mart contends that the Act imposes an excessive burden on interstate commerce because it is more expensive to do business in Oklahoma in order to maintain compliance. Third, Wal-Mart alleges that the Act is extraterritorial in effect and that it is not the least restrictive means to accomplish the goal of insuring fair trade. The Court finds each of these arguments fails.

> ***Wal-Mart and amicus FTC have asserted that the Act conflicts with the Sherman Act. They have offered no factual situation that would support the allegation***

The prohibition against regulation by the states was enunciated in *Shafer v. Farmer's Grain Co. of Embden*, 268 U.S. 189 (1925). The Court struck down a North Dakota statute that required grading of wheat by state inspectors prior to shipment in interstate commerce. More recently, the Court used the *Shafer* rule to strike down the Illinois Business Takeover Act in *Edgar v. Mite Corp.*, 457 U.S. 624 (1982). The Illinois statute prevented interstate tender offers unless the offeror notified the Illinois Secretary of State prior to making the offer. As the act had the effect of regulating transactions wholly outside Illinois, the Court found that it directly restrained commerce.

Contrary to Wal-Mart's position, the Act does not directly regulate Wal-Mart's pricing and marketing programs. The Act is not structured as an affirmative mandate but rather is a prohibition against certain conduct. The statutes in *Shafer* and *Edgar* required action by the businesses acting in interstate commerce. While the Act clearly affects Wal-Mart's pricing policies, it does not *directly* regulate them.

Wal-Mart's second commerce clause challenge is that of excess burden. The Court's current standard for gauging whether a state statute unreasonably burdens commerce is set forth in *Pike v. Bruce Church*, 397 U.S. 137, 142 (1970):

> Where the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental; it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.

Thus, the Court must examine the interest to be protected as well as the impact upon interstate commerce.

The purposes of unfair sales acts include: eliminating "loss leaders" (advertising "below cost" items with intent to make up the difference on marked up items) and preventing monopolies. 54 Am.Jur.2d *Monopolies* § 000 (1971). While the United States Supreme Court has repeatedly struck down statutes that served to protect local economic interests, the court has upheld statutes that legitimately relate to the health and safety of the states' citizens. See, *e.g.*, *Polar Ice Cream & Creamery Co. v. Andrews*, 375 U.S. 361 (1964); *Huron Portland Cement Co. v. City of Detroit, Mich.*, 362 U.S. 440 (1960) (smoke abatement code); *Nebbia v. New York*, 291 U.S. 502 (1934) (milk pricing statute). Consumer protection clearly falls within this purview.

Therefore the major area for disagreement is the extent of the effects upon interstate commerce. Wal-Mart's chief argument is that it is more expensive to do business in Oklahoma than in other states without similar legislation. The Act, however, is a "burden" upon all businesses that elect to sell goods in Oklahoma, and not merely foreign businesses. The fact that a multistate business must comply with the varying regulations of each state in which it transacts business is not a burden on commerce between the states. It cannot be said that the burden is "clearly excessive" in relation to the "benefits" that supposedly underlie the statute itself.

The Supreme Court cases that have struck down state statutes under the *Pike* test or its predecessors involved discrimination based upon state lines. In most cases the items of commerce were merely passing through the regulating state. See *e.g.*, *Southern Pac. Co. v. State of Arizona*, 325 U.S. 761 (1945) (Arizona train length case). Other statutes treated local buyers and sellers differently than foreign buyers and sellers. See, *e.g.*, *Great Atlantic & Pacific Tea Co. v. Cottrell*, 424 U.S. 366 (1976) (La. milk could not be sold in Miss. because states had not executed reciprocity agreement).

> ***The prohibition against "sales below cost" is not a fixed price, but varies with the individual's cost of doing business***

Wal-Mart's argument that it cannot calculate costs also seems implausible in light of the nature of the merchandising business. In order to make a profit, a seller must know the costs of goods and expenses of doing business. The Act only presumes an expense of six percent if the seller cannot prove a lower cost. Thus, Wal-Mart is not denied an opportunity to prove that its retailing method permits a "rock bottom" price, albeit an expensive task.

Lastly, Wal-Mart challenges the Act on grounds that it is not the least restrictive means to accomplish the goal. In *Dean Milk Co. v. City of Madison*, 340 U.S. 349 (1951), the Court struck down a milk regulation that required pasteurization within five miles of the city. The Court concluded that alternative means existed to protect the residents' health, i.e., the city could send inspectors to distant processing plants. Analogizing to the *Dean* case, Wal-Mart argues that the Oklahoma Trusts and Pools Act (OTPA) and federal antitrust laws are less restrictive alternatives.

Again, Wal-Mart fails to discuss the "loss leader" purpose of the Act. While Wal-Mart correctly notes that the OTPA and federal antitrust laws are consistent, it does not argue that they are less restrictive to prevent "loss leaders." Additionally, the available remedies of the OTPA and federal antitrust laws do not appear to be "alternatives" as contemplated in *Dean Milk*.

Other arguments advanced by Wal-Mart include the extraterritorial effect and need for uniformity. The Court finds no merit to these arguments.

Finally, Wal-Mart's premise for this challenge, pursuant to the Commerce Clause, is that price regulation is only justified in times of emergency and that free competition should serve as the governing factor. See, *e.g.*, Areeda & Turner, Predatory Pricing and Related Practices Under Section 2 of the Sherman Act, 48 U. Chi. L. Rev. 697 (1975). This premise is illogical given the purposes of the Act. If the Act does not accomplish the goal of ensuring fair competition, then the matter is one of legislative concern if otherwise constitutional. Wal-Mart does not adequately refute the second purpose of the Act—preventing "loss leaders." Although this purpose is somewhat paternalistic, it is nonetheless a viable policy that supports a finding of constitutionality.

II. Due Process

Although common law permitted a person to sell goods without restriction, price regulation statutes have been upheld as a valid exercise of police power. The Act abrogates the common law right in favor of consumer protection and prevention of monopolies. The right of states to legislate in these areas has long been established. See, *e.g.*, *Great Atlantic & Pacific Tea Co. v. Ervin*, 23 F. Supp. 70, 76 (D. Minn. 1938); *Wholesale Tobacco Dealers Bur. v. National Candy & Tobacco Co.*, 82 P.2d 3, 10 (Cal. 1938).

The Act is not a price fixing law as it does not mandate a minimum or maximum price; the prohibition against "sales below costs" is not a fixed price, but varies with the individual costs of doing business. See, *e.g.*, *Rocky Mtn. Whole. Co. v. Ponca Whole. Mercantile Co.*, 360 P.2d 643, 645 (N.M. 1961); *Trade Comm'n v. Skaggs Drug Centers*, 446 P.2d 958 (Utah 1968). As the Act does not fix prices, it is unnecessary to determine if the sale of drugs and drug-related items are "affected with a public interest." This phase was commonly used as a test prior to *Nebbia*. Even if the test remains viable, there is no question but that drugs and drug-related items directly affect public health and safety.

Where Sales-Below-Cost Laws Are Applicable

Arkansas	Montana
California	North Dakota
Colorado	Oklahoma
Hawaii	Pennsylvania
Idaho	Rhode Island
Kentucky	South Carolina
Louisiana	Tennessee
Maine	Utah
Maryland	West Virginia
Massachusetts	Wisconsin
Minnesota	Wyoming

The Court in *Nebbia* set forth the test to be used in examining the validity of state economic statutes under the due process clause:

> So far as the requirement of due process is concerned, and in the absence of other constitutional restriction, a state is free to adopt whatever economic policy may reasonably be deemed to promote public welfare, and to enforce that policy by legislation adapted to its purpose. The courts are without authority either to declare such policy, or, when it is declared by the legislature, to override it. If the laws passed are seen to have reasonable relation to a proper legislative purpose, and are neither arbitrary nor discriminatory, the requirements of due process are satisfied, and judicial determination to that effect renders a court *functus officio*.

291 U.S. at 537. The Act has a reasonable relationship to a valid purpose and applies equally to all vendors.

Wal-Mart challenges the Act as being arbitrary and discriminatory on two grounds: vagueness and irrational basis for the presumption. Wal-Mart claims that several of the Act provisions are undefined and therefore vague. In support of this argument, Wal-Mart repeats its claims that it cannot ascertain costs in a practical manner. Wal-Mart does not cite any cases that discuss the challenged statutory language. Three courts have addressed the vagueness question and upheld the statutes. See *Baseline Liquors v. Circle K. Corp.*, 630 P.2d 38 (Ariz. Ct. App. 1981); *People v. Payless Drug Store*, 153 P.2d 9 (Cal. 1944); *Trade Commission v. Skaggs Drug Centers, Inc.* 446 P.2d 958 (Utah 1968).

The Utah court commented on the problem as follows:

> We are of the opinion the trial court erred in

> holding the Act requires the cost must be exact. All the statute requires is a cost figure arrived at by reasonable accounting methods. A statute is not to be declared invalid because of difficulty in applying its provisions. We think the Act is sufficiently clear to require compliance. The constitutionality of a statute is not to be decided on questions of inconvenience, or difficulty in application of a cost standard.

446 P.2d at 964. The *Payless* court made a similar observation. 153 P.2d at 15.

Wal-Mart's "real concern," according to plaintiffs, is the presumption of predatory intent codified at Okla. Stat. tit. 15, § 598.5 (1981). Wal-Mart argues that the presumption is unconstitutional because it does not have a rational basis. Most of the cases cited by Wal-Mart involved statutes that did not distinguish between different classes of merchants, i.e. the statute did not permit considerations of the retailers' costs of doing business. *E.g., Great Atlantic & Pacific Tea Co.*, 23 F Supp. 70 (D. Minn. 1938). The better view, however, is found in *People v. Payless Drug Store:*

> Our statute does not withdraw from the accuser the burden of proving a violation, nor does it deprive the defendant of the benefit of the presumption of innocence. Here there was a manifest disparity in convenience of proof and opportunity for knowledge as between the plaintiff and the defendants. The defendants were in the better position to know the intent and purpose of their conduct, which it might be difficult for the plaintiff to prove. The Legislature merely enacted into law what is common in human experience, that when a person causes injury by his acts he should be deemed to intend such consequences unless he can excuse or explain his conduct by facts showing that he had an innocent intent. It was so enacted to avoid the possible conclusion that the accuser, from whom the defendants' purpose is generally concealed, must produce affirmative evidence of guilty intent in every situation in order to make out a prima facie case of violation of the act. After proof of the sales below cost and injury resulting therefrom, there is no undue hardship cast upon the defendants to require them to come forward with evidence of their true intent as against the prima facie showing, or with evidence which will bring them within a specified exception in the act.

153 P.2d at 13. The New Mexico Supreme Court in *Rocky Mountain Wholsale Co.* upheld the presumption:

> We are satisfied that there is a rational and reasonable relationship between the facts required to be proved and the conclusion based thereon by direction of the statute, and the statutory provision is constitutional and valid.

360 P.2d 643, 647 (N.M. 1961); *Accord Oil Well Co. v. Alabama State Department of Revenue*, 350 F. Supp. 416, 419 (M.D. Ala. 1971) (upholding presumption under the Ala. Unfair Cigarette Sales Act).

While the studies cited by Wal-Mart discredit the effectiveness of the Act in the modern business climate, they cannot eliminate the rational relationship of the Act to its goals. The inefficiency should be addressed to the legislature and not the courts. See *Flank Oil Co v. Tennessee Gas Transmission Co.*, 349 P.2d 1005, 1015 (Colo. 1960).

Defendant Wal-Mart's discussion of *United States v. United States Gypsum Co.*, 438 U.S. 422 (1978), is inapplicable. While the Court declared that criminal intent in an antitrust case must be shown from the evidence of the government and not from a presumption, the court specifically noted in a footnote that the case at bar did not change the rule in civil cases. *Id.* at 436 n.13.

III. Preemption by Federal Anti-Trust Laws

Finally, Wal-Mart claims that the Oklahoma statute chills competitive pricing and is thereby preempted by Federal antitrust legislation. Wal-Mart's claim is based upon the statutory presumption of "intent to injure competitors," which is created when the plaintiff introduces evidence that the defendant has offered or sold merchandise at a price below cost. According to Wal-Mart, such a presumption creates a disincentive to engage in competitive pricing because the burden to rebut the presumption is on the defendant. Wal-Mart's claim that the statute chills competitive pricing is entirely speculative. Further, the United States Supreme Court has stated that a state statute is not preempted by federal and antitrust laws simply because the state scheme might have an anticompetitive effect. *Rice v. Norman Williams Co.* 458 U.S. 654, 659 (1982)

Rice v. Norman Williams Co. is the controlling decision on preemption in the antitrust area. In *Rice*, the Court stated that a state statute, considered in the abstract, may be condemned under federal anti-trust laws only

Twenty-two states now have laws providing for criminal or civil penalties for below-cost sales

if it mandates or authorizes conduct that constitutes in all cases a violation of the antitrust laws, or if it places irresistible pressure on a party to violate the antitrust laws in order to comply with the statute. *Id.* at 661. The Court also stated that "[o]ne might be able to hypothesize an arrangement enforced by the [state] statute that might be prohibited by [the federal statute], but this is insufficient to invalidate the state statute pursuant to the Supremacy Clause. 'To hold otherwise would be to ignore the teaching of this court's decisions that enjoin seeking out conflicts between state and federal regulation where none clearly exists." 458 U.S. at 664. (citation omitted).

Wal-Mart and *amicus* FTC have asserted that the Act

conflicts with the Sherman Act. They have offered no factual situation that would support the allegation. but instead. have offered only the speculative assertion that the Act chills competitive pricing. If the Act mandated a *per se* violation of section one of the Sherman Act. it would conflict with federal policy. However. the Act does not mandate nor authorize either vertical or horizontal price restraints. It simply mandates an individually determined price floor below which the merchandise may not be sold or offered. Further. the Act contains a number of defenses. By definition a violation is not *per se* where defenses exist.

If the activity that is addressed in the Act is not a *per se* violation of the Sherman Act. then the activity must be analyzed under the rule of reason. *Id.* The rule of reason is not a tool that can be applied in the abstract to a statute. but rather must be applied to a specific factual situation. Since the Act does not mandate a *per se* violation. the proper application of federal antitrust laws to the statute is by applying the rule of reason to the conduct of the parties in each specific situation.

Both Wal-Mart and FTC have referred to the Act as a minimum markup statute. Although the statute uses the term "markup," the Act should not be construed as mandating a "minimum markup." Okla. Stat. tit. 15. § 598.2(a)(4) (1981). Under the definition of "cost to the retailer," the Act states that cost includes invoice cost. plus freight. less trade discounts. plus "a proportionate part of the cost of doing business. which markup. in the absence of proof of a lesser cost. shall be six percent ... ." *Id.*

The term "cost of doing business" is generally understood to mean "overhead." The Act does not require a minimum markup. but rather. recognizes that the true "cost" of merchandise includes a proportionate amount of the total overhead costs of the business. The Act allows a retailer to calculate its own overhead. but also provides the six percent figure for the merchant with a less sophisticated accounting system who cannot calculate its overhead without great effort.

The Supreme Court has stated that a state statute is not preempted by federal antitrust laws simply because the state scheme might have an anticompetitive effect

The FTC claims that the Oklahoma Supreme Court has interpreted the statutory presumption of intent in such a manner that it cannot be rebutted. A closer look at two Oklahoma Supreme Court cases reveals that the claims of the FTC are unfounded. In both cases the court determined that the evidence presented by the defendants did not rebut the presumption of intent—not because the presumption could not be rebutted. but because the defendants did not meet the statutory requirements for the exemption from the act.

In *Safeway Stores v. Oklahoma Retail Grocers Assoc.*, the defendant claimed that it had sold goods at a price below its cost in order to meet the prices of its competitors. 322 P.2d 179 (Okla. 1957). *aff'd.* 360 U.S. 334 (1959). In claiming that it was selling below cost to meet a competitors price. the defendant was relying on a statutory exemption from the below-cost statute. Okla. Stat. tit. 15 § 598.7 (1981) provides that a merchant may sell its goods at a price below cost when the merchant is. in good faith. meeting a competitor's price. In *Safeway* the defendant had admitted that it knew that its competitors were selling goods at prices below the competitor's cost. in violation of the Act. The Court concluded that. since the defendant knew the prices of its competitors were in violation of the Act. the defendant did not meet the good faith requirement.

The most recent case in which the Oklahoma Supreme Court addressed the constitutionality of the Act was *Glenn Smith Oil Co. v. H.R. Sheets*. 704 P.2d 474 (Okla. 1985). In that case the Oklahoma Supreme Court also determined that the defendant had failed to rebut the statutory presumption of intent. As in *Safeway*, the defendant in *Sheets* claimed that it was selling below cost to meet a competitor's price. The defendant also admitted that it knew that the competitor's prices were illegally low. Citing *Safeway*, the court determined that the defendant had failed to rebut the presumption because it did not meet the good faith requirement.

Although the FTC claims that these two cases show that the Oklahoma statutory presumption cannot be rebutted. the cases do not support that argument. In both cases the defendants simply failed to meet the requirement of the statutory exemption that they were claiming. Had the defendants in each case made the below cost sales in good faith or had they presented some valid business reason for the prices. such as an advertising promotion. the presumption would have been successfully rebutted. The below-cost sales then would not have caused a violation of the Act.

Virtually the same issues were presented to the Ninth Circuit in the case of *William Inglis & Sons Baking Co. v. ITT Continental Baking Co., Inc.* 668 F.2d 1014 (9th Cir. 1982). A comparison of the California Unfair Practices Act. California Business and Professional Code §§ 17000-17101. and the Oklahoma Unfair Trade Practice Act reveals them to be almost indistinguishable. This Court agrees with the well-reasoned opinion of the Ninth Circuit which upheld the constitutionality of the California Act.

It Is Therefore Ordered. Adjudged and Decreed that defendants' motion to dismiss be and is hereby overruled.

James O. Ellison
United States District Judge

Exhibit #5

Reining in a Rogue Agency

Through its outrageous acts of inappropriate interference in state regulatory and legislative activities—and possible illegal lobbying efforts—the Federal Trade Commission has drawn considerable congressional ire. Result: legislation has now passed the full Senate that would require the commission to report to Congress at least 60 days before it takes any action on state regulatory efforts.

The bill applies that requirement to FTC interference in the action of any state regulatory agency. Under normal circumstances—with a "normal" FTC—such language would automatically include state boards of pharmacy. But this is not an FTC that can be trusted to apply such normally accepted standards, so at NARD's request, Sens. Albert Gore (D-TN) and Ernest Hollings (D-SC) on the FTC reauthorization bill clarified that congressional predisclosure language for FTC intervention with "state agencies" includes state boards of pharmacy.

During NARD's legislative conference this year, Senate Commerce Committee Chairman Hollings vowed to support NARD's efforts to assure FTC accountability—especially for actions interfering with the regulatory efforts of boards of pharmacy.

On April 7, 1987, the United States Senate agreed that the activities of the state boards that regulate the practice of pharmacy are covered by Section 15 of the FTC legislation, S. 677, which aims to assure notice of FTC intervention in state proceedings and to help assure that such intervention is limited to appropriate circumstances.

Gore, chairman of the Consumer Subcommittee of the Commerce Committee, with jurisdiction over the FTC, sought this clarification at NARD's request. Senator Gore brought to the attention of his Senate colleagues the FTC Bureau of Competition's intervention in Georgia on the matter of physician dispensing for profit as particularly illustrative of the need for Section 15.

"I certainly understand why the independent retail pharmacists recommend a moratorium on interventions in state activities by the FTC," said Gore "but my purpose is to make it clearly un-

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FEDERAL TRADE COMMISSION ACT AMENDMENTS OF 1987

Mr GORE. Mr President, the need for section 15(a) is particularly illustrated by the recent intervention of the FTC Bureau of Competition in proceedings traditionally reserved for the states involving the Georgia State Board of Pharmacy. These proceedings involved the practice of physicians dispensing prescription drugs for profit. While the FTC and the Justice Department in 1970 supported Federal legislation to prohibit physician dispensing for profit, the current FTC's Bureau of Competition had endorsed this practice. This intervention has been characterized as a surprise attack on the state's prerogative to regulate the practice of pharmacy.

Section 15(a) prohibits the FTC from using any funds for submitting statements to, appearing before, or intervening in the proceedings of a state agency without at least 60 days notice before any such proposed action.

I certainly understand why the independent retail pharmacists recommend a moratorium on interventions in state activities by the FTC, but my purpose now is to make it clearly understood by the FTC, states, and any other interested parties that "state agency" as used in section 15(a) includes the activities of agents of the state such as boards of pharmacy or other entities that regulate the practice of pharmacy.

Mr. President, I ask unanimous consent that a letter stressing the need for such clarification from the National Association of Retail Druggists be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD as follows:

THE NATIONAL ASSOCIATION OF RETAIL DRUGGISTS
Alexandria, VA, April 6, 1987

Hon. ALBERT GORE, Jr.,
Chairman, Consumer Subcommittee, Senate Committee on Commerce, Science and Transportation, Washington, DC

DEAR MR CHAIRMAN: The purpose of this correspondence is to support your overall efforts regarding the Federal Trade Commission Act Amendments of 1987, S. 677, which was ordered reported by the Senate Commerce Committee on March 10; and in particular to assist you on the clarification of Section 15 addressing the intervention by the Federal Trade Commission (FTC) in "state agency" proceedings.

In recent months, bureaus of the FTC, particularly the Bureau of Competition (BC), intervened in regulatory matters, traditionally reserved to the states and to their professional certification boards, including boards of pharmacy and other bodies which regulate the practice of pharmacy in their respective states. In several instances the BC provided little more notice of its intention to intervene than an armed robber provides a victim preceding a mugging.

We are aware of no better examples than letters in November and December 1986 from BC Director Zuckerman to the Georgia and Maryland State Examining Boards in which the BC gratuitously expressed the view that the long-repudiated practice of physicians dispensing for profit is procompetitive instead of anticompetitive. Needless to say, this radical departure from earlier bipartisan assessments which found such practices to be anticompetitive and unethical has created concern amongst consumer and health organizations.

The American Medical Association (AMA) House of Delegates, for example, in December 1986 adopted the following recommendation from its council on Judicial and Ethical Affairs: "Although there are circumstances in which physicians may ethically engage in the dispensing of drugs, devices or other products, physicians are urged to avoid regular dispensing and retail sale of drugs, devices, or other products when the needs of patients can be met adequately by local ethical pharmacies or suppliers." Additionally the NARD, AMA, National Association of Chain Drug Stores (NACDS), and the members of the Joint Commission of Pharmacy Practitioners (JCPP) have concurred in a joint statement supporting the traditional checks and balances assured when physicians prescribe and pharmacists dispense prescription drugs.

The notion of physicians profiteering from both the prescribing and dispensing of prescription drugs has been well-documented in the '50s, '60s, and '70s as inherently unethical in leading to predictable anticompetitive effects, including unnecessary prescribing, loss of freedom of choice of prescription drugs, limited choice of prescription drugs, higher prices to the consumer, and health consequences related to the elimination of pharmacists from the dispensing of prescription drugs.

Beyond the total breach with all earlier substantial assessments, only achievable by detached ideologues, the BC letters are inflammatory generally regarding the efficacy of the profession of pharmacy. Retail pharmacists (druggists) have earned a position of trust and respect in the minds of the American public annually reflected by surveys such as the Gallup Poll which have found repeatedly that our members are the most highly regarded of the non-secular professions. Understandably, our members are personally and professionally outraged by the BC pronouncements.

In addition, these gratuitously expressed views have had a chilling effect upon state legislators and regulators far beyond Georgia and Maryland. We have had reports from Oklahoma, Indiana, California, Nevada and Virginia, to mention a few, where bonafide efforts by state boards addressing the subject of physician dispensing for profit have been put on the back burner because individuals have been intimidated by the views expressed by the BC. In fact, the NARD and NACDS (3-20-87), which represent virtually every retail pharmacy in the United States, have widely distributed a lega[l] memorandum to the states and to the U.S. Congress so that public policy makers ca[n] objectively consider the anticompetitive im[-]plications of physician dispensing an[d] related public health and safety concern[s]. Additionally, NARD since early Decembe[r] has attempted to obtain, through th[e] Freedom of Information Act and othe[r] means, the true story behind these inflam[-]matory letters. To date, the FTC is resistin[g] our efforts.

Given the manner in which the FTC ha[s] addressed the matter of physician dispen[s]ing and given their failure to act in so man[y] areas required by law and acknowledging th[e] unfortunate, but essential need for more oversight, we believe that the term "sta[te] agency" in Section 15(a), which would no[r]mally be interpreted to include state profe[s]sional boards such as boards of pharma[cy], and other state entities that regulate pha[r]macies, needs, under these unfortunate c[ir]cumstances, special clarification by its Sena[te] authors.

Had Section 15(a) been law in 1986, sta[tes] such as Georgia would have at least been [given] notice as to the potential FTC meddling a[nd] perhaps FTC could have been dissuaded [or] stopped from meddling.

Given the particularly outrageous asp[ect] of the intervention on the subject of phy[si]cian dispensing for profit, retail pharma[cists] certainly would be justified in supportin[g a] new Section 15(c) which would establis[h a] temporary moratorium on such FTC int[er]vention for fiscal years 1988, 1989, a[nd] 1990.

In addition to section 15, we strongly [en]dorse S. 677, especially as it addres[ses] predatory pricing. What gall this FTC h

It's operating as if it's above the law or more exactly, in a lawless manner. Where are the cases on predatory pricing? On questionable commercial activities of nonprofits? On the legions of Robinson-Patman violations? On multitier pricing practices in the pharmaceutical market, and especially resales by health care institutions?

When your committee asked about such matters, in particular, predatory pricing, the FTC responded by claiming that such instances were as rare as unicorn sightings. In our view, such arrogance by federal officials is without peer and what is truly as rare as a unicorn sighting are the acts taken by the FTC to protect small business and the consumer from unfair competition.

In commenting on the recent sentence imposed on Mr. Pollard, his defense attorney noted that ideologues rarely recognize the consequences of their actions. After witnessing Mr. Zuckerman's presentation to the NARD Conference on National Legislation and Public Affairs on March 24, 1987, where his notions were greeted by howls of independent retail pharmacists—democrats, independents, republicans, conservative, moderate, and liberal—from across the country, the defense counsel's observation seemed appropriate to this circumstance. It would be an understatement of the 100th Congress to note that this FTC certainly does not appreciate the importance of the observation by the U.S. Supreme Court case *Ferguson v. Skrupa*, 372 U.S. 726, where in interpreting a Kansas statute the Court observed: "Whether the legislation takes for its textbook Adam Smith, Herbert Spencer, Lord Keynes, or some other is no concern of ours."

On behalf of the 30 000 independent pharmacies where 75,000 pharmacists practice their profession, NARD expresses its support for S. 677, especially the predatory pricing section and Section 15.

With warm regards,

John Rector, Esq.
General Counsel and Vice President, Government Affairs

Mr. HOLLINGS. Mr. President, we have certainly had an opportunity to review the problems raised by my colleague from Tennessee. I, too, am concerned about FTC intervention in state proceedings such as those involving the issue of physicians dispensing for profit. The FTC is espousing a repudiated view on the subject. I also want to note that section 15(a) of this legislation does in fact apply to the activities of the boards of pharmacy in the States.

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derstood by the FTC, states, and any other interested parties that "state agency" as used in section 15(a) includes the activities of agents of the state such as boards of pharmacy or other entities that regulate the practice of pharmacy."

He then introduced as further legislative history a detailed letter from NARD (see opposite page) stressing the need for such clarification, which was heartily endorsed by Hollings: "We have certainly had an opportunity to review the problems raised by my colleague from Tennessee. I, too, am concerned about FTC intervention in state proceedings such as those involving the issue of physicians dispensing for profit." Hollings told his colleagues "The FTC is espousing a repudiated view on this subject. I also want to note that section 15(a) of this legislation does in fact apply to the activities of the boards of pharmacy in the states."

But Hollings wasn't through with an FTC that—through *inaction* on some critical laws such as the federal prohibition of predatory pricing, and *excess* actions in areas in which FTC meddling is inappropriate—angered many lawmakers.

During an April 22 appropriations hearing for the FTC, Hollings grilled FTC Chairman Daniel Oliver on the agency's inappropriate actions involving bona fide state regulatory activities, and warned that, as recommended by NARD, he may call for a temporary moratorium on FTC activities in the states.

Senator Warren Rudman (R-NH) and Ernest Hollings (D-SC) cross examine Federal Trade Commission Chairman Daniel Oliver at an April 22 hearing investigating inappropriate FTC interference in state regulatory activities. During the hearing, Hollings warned that he may call for a temporary moratorium on FTC actions in the states, as recommended by NARD, and requested documents the FTC has refused to turn over to NARD in its FTC Freedom of Information Act litigation. Also present at the hearing was Sen. Frank Lautenberg (D-NJ).

During that hearing, Hollings specifically noted NARD's ongoing FTC Freedom of Information Act litigation, in which NARD has requested FTC documents relating to staff opinions on physician dispensing for profit. The FTC has refused to turn over certain key documents—variously claiming that they did not exist, then that they did exist but could not be found, then that they were found but were privileged. Such documents, even if they really are privileged (and not merely embarrassing or even demonstrating illegal lobbying by FTC) *cannot* be withheld from the U.S. Senate. During the April 22 cross examination of Oliver, Hollings requested that FTC turn over to him the documents it has refused to give to NARD in its FTC litigation.

In the course of the Freedom of Information Act litigation, evidence has come to light of secret FTC investigations of state boards of pharmacy, and more evidence of possible illegal lobbying by the agency. Agencies like FTC are prohibited by law from lobbying state or federal lawmakers. ■

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